

# Exhibit 20

Witness Name: James Gardner

Date of Deposition: 05/23/2018

Title: Account Manager of Direct Claims at Resolute.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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NATIONAL SURETY CORPORATION, )  
 )  
Plaintiff )  
 )  
vs. ) C.A. No. 1:17-CV-3455  
 )  
LAMORAK INSURANCE COMPANY, )  
 )  
Defendant )  
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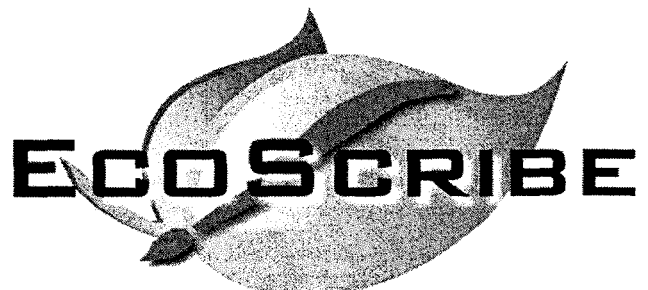
CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

30(b)(6) DEPOSITION  
OF LAMORAK INSURANCE COMPANY BY THEIR  
DESIGNEE JAMES M. GARDNER AND IN HIS  
INDIVIDUAL CAPACITY  
WEDNESDAY, MAY 23, 2018  
1:18 P.M. - 4:31 P.M.  
HINSHAW & CULBERTSON LLP  
28 STATE STREET  
BOSTON, MASSACHUSETTS

Job NO. 28171

Reported by: Sandra A. Deschaine, CSR, RPR,  
CLR, RSA

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NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 2..5

Page 2

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APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

KARBAL, COHEN, ECONOMOU, SILK & DUNNE, LLC

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jschulze@hinsahwlaw.com

Also Present: Carol Griffin, Resolute

Management, Inc.

Page 3

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May 23, 2018

1:18. P.M.

30(b)(6) Deposition of

James M. Gardner, held at the offices of

Hinshaw & Culbertson LLP, 28 State Street,

Boston, Massachusetts, pursuant to Agreement

before Sandra A. Deschaine, Registered

Professional Reporter, Certified LiveNote

Reporter, Real-time Services Administrator

and Notary Public within and for the

Commonwealth of Massachusetts.

Page 4

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INDEX

WITNESS

James M. Gardner

By Mr. Dunne

EXHIBIT

DESCRIPTION

(Retained by Mr. Schulze.)

Exhibit 1

Notice of Deposition, Lamorak 6

Insurance Company

Exhibit 2

Lamorak Insurance Company's 36

Answer and Affirmative

Defenses to First Amended

Complaint

Exhibit 3

Bates Nos. NSCLM009436 44

through -9441

Exhibit 4

Bates Nos. NSCLM000187 68

through -0189

Exhibit 5

Bates Nos. NSCLM009826 71

through / -9826

Exhibit 6

Interim Settlement Funding 74

Agreement

Page 5

1

2

3

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JAMES M. GARDNER, Deponent,

having first been satisfactorily identified

by the production of his Maine driver's

license and duly sworn by the Notary Public,

was examined and testified as follows:

PROCEEDINGS

EXAMINATION

BY MR. DUNNE:

Q. Could you please state your name

for the record?

A. James Gardner.

Q. And, Mr. Gardner, have you ever

been deposed before?

A. I have not.

Q. Okay. So I'm sure your counsel

told you, but I'll go over some rules and

regulations and other things for depositions.

She's taking down our audible answers and

questions, and so you need to answer audibly.

Grunts, "Yeses" and "nos" whatever is what

suffices. Head nods she can't take down.

I don't plan to be here too long

today, but if any time you need to take a

break, please, you know, just indicate if you

need to take a break. The one exception

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 6..9

<p style="text-align: right;">Page 6</p> <p>1 would be if a question is pending, I would 2 ask that you answer the question, and if you 3 need to take a break, please do so. 4 I may ask questions that may not 5 be clear to you. If the question is not 6 clear to you, please let me know, because we 7 will assume that it's understood by you when 8 you answer it. 9 Today you are here both in your 10 individual capacity and as your corporate 11 capacity for Lamorak. 12 Do you understand that? 13 <b>A. Yes.</b> 14 Q. So I will try to make sure my 15 questions are clear in terms of what I'm 16 asking you, about something you did versus 17 what Lamorak's position is with regard to 18 this case. 19 Is that understood? 20 <b>A. Yes.</b> 21 (Exhibit 1, Notice of Deposition, Lamorak 22 Insurance Company, marked for 23 identification.) 24 BY MR. DUNNE: 25 Q. I'm showing you what's been marked</p>	<p style="text-align: right;">Page 7</p> <p>1 as Gardner Exhibit 1. 2 Sir, have you seen this document 3 before? 4 <b>A. I have.</b> 5 Q. And a little while ago you 6 acknowledged that you're being presented here 7 today as Lamorak's witness. 8 Can you review the matters for 9 examination, on page 2? 10 <b>A. Okay.</b> 11 Q. Do you understand that you're 12 being presented here today to provide 13 Lamorak's positions with regard to the items 14 set forth in 1 through 6? 15 <b>A. I do.</b> 16 Q. And you understand, as Lamorak's 17 witness, you must testify about information 18 known or reasonably available to Lamorak, not 19 just within your own personal purview? 20 <b>A. I do.</b> 21 Q. And looking at items 1 through 6, 22 as you sit here today, are you prepared to 23 testify as to each of those items? 24 <b>A. I am.</b> 25 Q. What did you do to prepare for</p>
<p style="text-align: right;">Page 8</p> <p>1 your deposition today? 2 <b>A. I met with counsel yesterday to</b> 3 <b>generally discuss the deposition, also review</b> 4 <b>some documents.</b> 5 Q. All right. Was anybody else 6 present during your meeting with counsel? 7 <b>A. Just Jason Schulze and Carol</b> 8 <b>Griffin.</b> 9 Q. And who is Carol Griffin? 10 <b>A. Carol Griffin is Lamorak's</b> 11 <b>in-house counsel. Let me correct that.</b> 12 <b>Excuse me. Carol Griffin is Resolute</b> 13 <b>Management's in-person counsel, and she is</b> 14 <b>serving as counsel for -- in our capacity as</b> 15 <b>administrator for Lamorak Insurance.</b> 16 Q. Can you explain what the 17 relationship is between Lamorak and Resolute? 18 MR. SCHULZE: Let me just voice an 19 objection, that that's not among the 20 deposition topics. So to the extent 21 you're answering on behalf of just 22 yourself as to Lamorak -- 23 MR. DUNNE: I'll rephrase. 24 MR. SCHULZE: As a general matter, 25 we can go ahead with that, but if</p>	<p style="text-align: right;">Page 9</p> <p>1 it's -- we can be a lot more specific -- 2 MR. DUNNE: I'll rephrase. 3 BY MR. DUNNE: 4 Q. What is understanding of the 5 relationship between Lamorak and Resolute? 6 <b>A. My understanding, as an employee</b> 7 <b>of Resolute, is that Resolute is a</b> 8 <b>third-party administrator on behalf of the</b> 9 <b>Lamorak Insurance.</b> 10 Q. What does it mean to handle claims 11 on behalf of the Lamorak? 12 <b>A. We handle asbestos claims, certain</b> 13 <b>asbestos claims for Lamorak Insurance. We</b> 14 <b>also handle certain hazardous waste claims</b> 15 <b>and certain other health hazard claims.</b> 16 Q. Do you have full authority to 17 settle claims against Lamorak in those areas? 18 <b>A. No, I do not.</b> 19 Q. Do you understand whether 20 Lamorak -- Resolute has to contact anybody at 21 Lamorak to resolve claims again Lamorak that 22 are being handled by Resolute? 23 MR. SCHULZE: Objection to form. 24 <b>A. It depends.</b> 25 BY MR. DUNNE:</p>

Page 10

1 Q. What does it depend upon?

2 **A. The level or the settlement**

3 **dollars.**

4 Q. So what's your settlement

5 authority?

6 **A. My current settlement authority is**

7 **\$5,000.**

8 Q. And were you involved in the

9 settlement of the Ciokajlo-Resinoid case?

10 **A. I was.**

11 Q. Do you know how much that case

12 settled for?

13 **A. I do.**

14 Q. And what was that number?

15 **A. [REDACTED]**

16 Q. So not within your authority?

17 **A. Correct.**

18 Q. Who are your supervisors that are

19 involved in the resolution of the Ciokajlo

20 matter?

21 **A. My supervisors who were involved**

22 **in the Ciokajlo matters were my team leader,**

23 **Clayton Budlong.**

24 Q. And what's his authority?

25 **A. If I recall correctly, I believe**

Page 12

1 **A. We did get ultimate settlement**

2 **authority from Tom Ryan.**

3 Q. All right. So can you briefly

4 describe for me what your duties and

5 responsibilities are as a -- strike that.

6 What's your title at Resolute?

7 **A. I am an account manager of direct**

8 **claims.**

9 Q. That's a mouthful.

10 And were you responsible for

11 handling the Ciokajlo case, during its entire

12 period at Resolute?

13 **A. No, I was not.**

14 Q. When did you become involved with

15 the Ciokajlo case?

16 **A. When I was assigned the Resolute**

17 **Engineering account, probably in or around**

18 **June of 2016.**

19 Q. And in June of 2016, was there

20 anything pressing going on in the Ciokajlo

21 matter when you took it over?

22 **A. I'm not sure what you mean by**

23 **"pressing."**

24 Q. What was, if you recall, what was

25 going on in the claim in June 2016, when you

Page 11

1 **he has authority up to [REDACTED].**

2 Q. Okay. Who's next above him?

3 **A. That would be Chris Dardis.**

4 Q. Okay. And who is above him --

5 excuse me. What's his authority, if you

6 know?

7 **A. If I recall correctly, I believe**

8 **it depends on the type of claim. [REDACTED]**

9 [REDACTED]

10 Q. Let's limit these questions, if it

11 makes a investigation to asbestos claims.

12 **A. Sure.**

13 Q. You understand that the Ciokajlo

14 matter is an asbestos matter?

15 **A. Correct.**

16 Q. So above Chris?

17 **A. Above Chris would be Bob McCarthy.**

18 Q. Okay. And what's his authority

19 level, if you know?

20 **A. [REDACTED]**

21 [REDACTED]

22 [REDACTED]

23 Q. Okay. With regard to the Ciokajlo

24 matter, did you have to go above Bob McCarthy

25 to get settlement authority?

Page 13

1 took it over?

2 **A. In June, when I took it over, I**

3 **believe we were still in the discovery phase.**

4 Q. And you handled the Ciokajlo claim

5 until resolution?

6 **A. Correct.**

7 Q. And do you recall approximately

8 when it was resolved?

9 **A. I believe it was resolved late**

10 **March of 2017.**

11 Q. And one of the things I forgot to

12 mention in the rules and regulations is this

13 isn't a memory test. So if there's something

14 you want to look at, just let me know.

15 **A. Okay. Understood.**

16 Q. The way I got down this tangent

17 was you are an account manager of direct

18 claims?

19 **A. Correct.**

20 Q. In June of 2016, you were an

21 account manager of direct claims?

22 **A. Correct.**

23 Q. What are your duties and

24 responsibilities as an account manager of

25 direct claims?



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 14..17

Page 14

1 **A. I review claims that impact my**  
2 **accounts for coverage, and to the extent the**  
3 **claims are covered, assess liability in**  
4 **consultation with counsel and pay covered**  
5 **claims.**  
6 Q. Is part of your review of coverage  
7 the investigation of policies?  
8 **A. I'm not sure what you mean by**  
9 **"investigation of policies."**  
10 Q. Sure. With regard to the Resolute  
11 matter, you're responsible for coverage under  
12 certain policies of insurance that  
13 potentially apply to the Resinoid claims. Is  
14 that a fair statement?  
15 **A. Sure.**  
16 Q. Can you describe -- strike that.  
17 And they weren't insured by  
18 Lamorak, were they?  
19 **A. I believe the policies were issued**  
20 **by General Accident.**  
21 Q. And do you recall between when and  
22 when the General Accident policies were  
23 issued?  
24 **A. I believe Lamorak has acknowledged**  
25 **General Accident policies from the period of**

Page 16

1 Ciokajlo-Resinoid matter?  
2 **A. Correct.**  
3 Q. And you noted that there was  
4 negotiating policies from '59 to '73 and '79  
5 to '89?  
6 **A. Correct.**  
7 Q. Did you investigate who issued the  
8 coverage between '73 and '79?  
9 **A. Again, I'm not sure what you mean**  
10 **by "who issued" or who, you know, investigate**  
11 **as to who issued it.**  
12 **We have run a policy search for**  
13 **any and all policies issued by Lamorak**  
14 **companies, and we have not -- that policy**  
15 **search did not produce any additional**  
16 **policies or any additional coverage from what**  
17 **Lamorak had previously acknowledged.**  
18 Q. And when you say it didn't reveal  
19 any additional coverage, what do you mean by  
20 that?  
21 **A. The policy search did not locate**  
22 **any additional policy information, other than**  
23 **what we have already known to exist.**  
24 Q. And what does a policy search  
25 entail -- strike that.

Page 15

1 **12/31/1959 through 12/31/1973 and 12/31/1979**  
2 **through 12/31/1989.**  
3 Q. And at this point with regard to  
4 the Resinoid account, there are policies that  
5 are missing between '73 and '79. Is that a  
6 fair statement?  
7 **A. It depends on what -- I'm not sure**  
8 **what you mean by "missing."**  
9 Q. Who issued the policies for the  
10 period between '73 and '79.  
11 **A. I do not know that, no.**  
12 Q. And as part of your coverage  
13 evaluation, did you investigate the coverage  
14 for that period?  
15 **A. Well, I mean, like I said, it**  
16 **would depend what time period.**  
17 Q. Okay. Maybe I'm confused.  
18 Did you have any involvement in  
19 the Resinoid account before June of 2016?  
20 **A. I do not.**  
21 Q. Okay. So one of the things I  
22 think you said is when you were assigned an  
23 account you looked at coverage?  
24 **A. Correct.**  
25 Q. And you looked at coverage in the

Page 17

1 Did you do to a policy search?  
2 **A. I did.**  
3 Q. When you took over this --  
4 **A. I initiated a policy search,**  
5 **correct.**  
6 Q. And what does a policy search  
7 entail?  
8 **A. A policy search, from my end,**  
9 **involves providing a request to our records**  
10 **specialist with permanent information, which**  
11 **may include the insured's name, underwriting**  
12 **entities and/or -- well, underwriting**  
13 **entities, policy years and/or specific policy**  
14 **numbers.**  
15 Q. And you indicated that that did  
16 not yield any information concerning  
17 additional Lamorak insurer policies between  
18 '73 and '79?  
19 **A. Correct.**  
20 Q. And are you aware, has Lamorak  
21 produced that information in this case?  
22 **A. I believe -- my understanding is**  
23 **that that would have been produced. Any**  
24 **information with respect to policy searches**  
25 **would have been in the file and would have**



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 18..21

<p style="text-align: right;">Page 18</p> <p>1 <b>been produced.</b></p> <p>2 Q. Now, "in the file," meaning would</p> <p>3 it be in the claims information or the policy</p> <p>4 information?</p> <p>5 <b>A. It likely would have been in the</b></p> <p>6 <b>policy information.</b></p> <p>7 Q. Okay. I think with regard to</p> <p>8 asbestos claims, you said you review</p> <p>9 coverage, you assess liability, and if</p> <p>10 there's coverage you pay claims?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. Anything else as account manager</p> <p>13 of direct claims, are your duties and</p> <p>14 responsibilities?</p> <p>15 <b>A. I would say those are the core</b></p> <p>16 <b>functions.</b></p> <p>17 Q. All right. I think we went</p> <p>18 through who you talked with concerning your</p> <p>19 preparation of -- for the dep today,</p> <p>20 Mr. Schulze, Ms. Griffin.</p> <p>21 Did you talk to anybody else in</p> <p>22 preparation for your deposition today?</p> <p>23 <b>A. I briefly -- I mean, I would have</b></p> <p>24 <b>generally briefed my supervisor Clayton</b></p> <p>25 <b>Budlong and the fact that I was taking the</b></p>	<p style="text-align: right;">Page 19</p> <p>1 <b>deposition today.</b></p> <p>2 Q. Did you talk to Mr. Bud Long in</p> <p>3 order to obtain any information responsive in</p> <p>4 the topics in the notice?</p> <p>5 <b>A. No, I did not.</b></p> <p>6 Q. It's more just telling him what</p> <p>7 was happening?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. Anybody else?</p> <p>10 <b>A. No.</b></p> <p>11 Q. And what documents did you look at</p> <p>12 to prepare for your deposition today?</p> <p>13 <b>A. I believe counsel provided me with</b></p> <p>14 <b>various documents that came from the claims</b></p> <p>15 <b>file. I believe I've reviewed the deposition</b></p> <p>16 <b>notice, the complaint, the answer to the</b></p> <p>17 <b>complaint, and policy information.</b></p> <p>18 Q. Did you review any of the National</p> <p>19 Surety production?</p> <p>20 <b>A. I did.</b></p> <p>21 Q. So when you said, "claims file" --</p> <p>22 <b>A. There were some claims information</b></p> <p>23 <b>from National Surety.</b></p> <p>24 Q. In your claims file?</p> <p>25 <b>A. No. From my understanding, from</b></p>
<p style="text-align: right;">Page 20</p> <p>1 <b>what's been produced.</b></p> <p>2 Q. From National Surety?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. Do you recall what National</p> <p>5 Surety-produced information you looked at</p> <p>6 specifically?</p> <p>7 <b>A. If I recall, some policies, and I</b></p> <p>8 <b>believe some claim file notes. There were</b></p> <p>9 <b>also, I believe, were some email</b></p> <p>10 <b>correspondence.</b></p> <p>11 Q. And what were the claim file</p> <p>12 notes, if you can recall, concerning?</p> <p>13 <b>A. If I recall, I believe they just</b></p> <p>14 <b>discussed some of the issues that would be</b></p> <p>15 <b>analyzed by the claims handler at the time.</b></p> <p>16 <b>I think, if I recall correctly, there was</b></p> <p>17 <b>some discussion as to the application of Ohio</b></p> <p>18 <b>law to Resinoid claims based on the National</b></p> <p>19 <b>Surety policies.</b></p> <p>20 Q. Was that correspondence with</p> <p>21 Shannon Hall? Do you recall?</p> <p>22 <b>A. I don't recall the name. Could</b></p> <p>23 <b>be.</b></p> <p>24 Q. Do you recall having any</p> <p>25 correspondence -- sorry, strike that.</p>	<p style="text-align: right;">Page 21</p> <p>1 Do you recall, you, while you're</p> <p>2 handling the claim, corresponding with</p> <p>3 anybody at National Surety concerning the</p> <p>4 applicable law?</p> <p>5 <b>A. I do not.</b></p> <p>6 Q. Do you recall any conversations</p> <p>7 that you had with anybody at National Surety</p> <p>8 concerning the applicable law?</p> <p>9 <b>A. I do not.</b></p> <p>10 Q. And when we're talking about</p> <p>11 applicable law, I'm talking about the law</p> <p>12 applicable to the insurance coverage issues</p> <p>13 and not to the underlying Ciokajlo matter.</p> <p>14 <b>A. Sure.</b></p> <p>15 Q. And what do you recall the note</p> <p>16 about the applicable law saying?</p> <p>17 <b>A. I believe that it was National</b></p> <p>18 <b>Surety's or, I guess, Fireman's Fund</b></p> <p>19 <b>assessment that Ohio law would apply to the</b></p> <p>20 <b>National Surety law policies.</b></p> <p>21 Q. Do you recall what that assessment</p> <p>22 was based on?</p> <p>23 <b>A. I don't recall the basis of the</b></p> <p>24 <b>assessment.</b></p> <p>25 Q. And during your handling of the</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 22..25

<p style="text-align: right;">Page 22</p> <p>1 Ciokajlo matter, did you confirm with anybody 2 at National Surety that that was, in fact, 3 their position with regard to the Ciokajlo 4 matter? 5 MR. SCHULZE: Objection to form. 6 <b>A. Can you repeat the question?</b> 7 BY MR. SCHULZE: 8 Q. Sure. So I think you testified 9 that you saw some notation in the National 10 Surety file? 11 <b>A. Correct.</b> 12 Q. That led you to believe that there 13 was a thought that Ohio law applied to the 14 coverage issues in the case? 15 <b>A. Correct.</b> 16 Q. Do you recall ever discussing with 17 anybody at National Surety that issue? 18 <b>A. That was specific to that claim?</b> 19 Q. Yes. 20 <b>A. To those claim notes? No, I do</b> 21 <b>not.</b> 22 Q. What about that was specific to 23 the coverage issuing in the Ciokajlo claim? 24 And I'm not talking about any of the recent 25 discussions that you may had concerning the</p>	<p style="text-align: right;">Page 23</p> <p>1 resolution of the claim. I'm talking about 2 back when the file was being handled between 3 '16 and '17. 4 <b>A. I think the first time I recall</b> 5 <b>this issue being discussed would have been</b> 6 <b>March of 2017, when, I believe, the claims</b> 7 <b>handler at Fireman's or Allianz issued some</b> 8 <b>reservation with respect to the applicable</b> 9 <b>law.</b> 10 Q. And do you recall the claims 11 handler's name? 12 <b>A. That would have been Richard</b> 13 <b>Harris.</b> 14 Q. And as I understand it, the 15 discussion ensued after you received a 16 Fireman's Fund reservation of rights letter 17 with regard to coverage issues? 18 <b>A. Correct.</b> 19 Q. And do you remember what the 20 conversation was? 21 <b>A. That I don't recall. I don't</b> 22 <b>recall the substance of the conversations.</b> 23 Q. Do you recall whether Mr. Harris 24 confirmed to you whether or not it was 25 National Surety's belief that Ohio law or</p>
<p style="text-align: right;">Page 24</p> <p>1 Illinois law or any other law applied to the 2 coverage issues? 3 <b>A. I'm trying to think. Excuse me.</b> 4 <b>I believe it was -- I think it was around</b> 5 <b>then that I was having discussions. It</b> 6 <b>was -- I apologize.</b> 7 <b>Can you repeat the question?</b> 8 Q. Sure. I'm just trying to track 9 down whether or not you recall specifically 10 any discussions with Richard Harris or anyone 11 else at National Surety, that the choice of 12 law issue concerning policy interpretation 13 for the Ciokajlo matter. 14 <b>A. The conversations I would have</b> 15 <b>had, I believe, would have been -- I'm not</b> 16 <b>sure -- I'm still not sure if I quite</b> 17 <b>understand your question.</b> 18 Q. Sure. I think you said, and 19 correct me if I'm wrong -- well, strike that. 20 Do you recall whether or not 21 Fireman's Funds at some point issued a 22 reservation of rights letter with regard to 23 the Ciokajlo matter? 24 <b>A. Yes, I do.</b> 25 Q. And I think you said that occurred</p>	<p style="text-align: right;">Page 25</p> <p>1 in, potentially, March of 2017? 2 <b>A. If I recall, I believe they issued</b> 3 <b>two different ones. One would have been</b> 4 <b>February, one would have been in March.</b> 5 Q. And did you look at both of those 6 letters in preparation for your dep today? 7 <b>A. I did.</b> 8 Q. So my question is: At any point 9 did you -- well, strike that. 10 Is it your understanding that 11 choice of law is an issue of the coverage 12 litigation? 13 <b>A. Of this litigation?</b> 14 Q. Yes. 15 <b>A. I do understand that, yes.</b> 16 Q. So my question is: Before the 17 coverage litigation and before -- well, 18 during the June to March '17 time frame, did 19 you talk with anybody at National Surety 20 about the choice of law issue? 21 <b>A. Yeah. I would have talked to Rich</b> 22 <b>Harris.</b> 23 Q. Do you recall the details of any 24 of those conversations? 25 <b>A. I believe the substance would be</b></p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 26..29

<p style="text-align: right;">Page 26</p> <p>1 <b>that National Surety was taking the position</b>  2 <b>that Illinois law applied to the</b>  3 <b>interpretation of their policies.</b>  4 Q. Okay. And did he ever -- do you  5 recall him explaining to you why?  6 <b>A. I believe generally, he -- I</b>  7 <b>believe that was generally discussed in the</b>  8 <b>reservation of rights letter. I'm not sure</b>  9 <b>if I had detailed conversation with him about</b>  10 <b>that.</b>  11 Q. In preparation for your deposition  12 today, have you learned what National  13 Surety's position is with regard to the  14 choice of law issue?  15 <b>A. Yes.</b>  16 MR. SCHULZE: I'm sure Mr. Dunne's  17 not asking you to divulge any  18 attorney-client communications that you  19 may have had in preparation for the  20 deposition. But to the extent that  21 we're not talking about that, you're  22 certainly to provide that testimony.  23 <b>A. No.</b>  24 BY MR. DUNNE:  25 Q. And what is your understanding of</p>	<p style="text-align: right;">Page 27</p> <p>1 National Surety's position with regard to  2 choice of law?  3 <b>A. My understanding of their</b>  4 <b>position, as to choice of law for this</b>  5 <b>litigation, is that Illinois law applies.</b>  6 Q. And do you have an understanding  7 as to why National Surety believes Illinois  8 law applies?  9 <b>A. Are you asking me -- let me just</b>  10 <b>be clear. Are you asking for the factual --</b>  11 <b>their factual basis as to why --</b>  12 Q. Yes.  13 <b>A. -- Illinois law applies to their</b>  14 <b>policies?</b>  15 Q. Exactly.  16 <b>A. I believe it would be something to</b>  17 <b>that effect that, I supposed, Resinoid</b>  18 <b>Engineering had operations in Illinois.</b>  19 Q. Have you ever heard that it's  20 National Surety's position that the policies  21 were issued to an Illinois broker?  22 <b>A. I have heard that, correct.</b>  23 Q. Does Lamorak have any facts that  24 would indicate that that's not correct?  25 Schulze: Objection to form.</p>
<p style="text-align: right;">Page 28</p> <p>1 <b>A. I'm not sure I understand the</b>  2 <b>question.</b>  3 BY MR. SCHULZE:  4 Q. Sure. So it's -- you understand  5 that it's National Surety's position that  6 Illinois law applies?  7 <b>A. Correct.</b>  8 Q. And do you have an understanding  9 that one of the reasons -- strike that.  10 Okay. So is it your -- is it  11 Lamorak's sole understanding that the reason  12 -- strike that.  13 Other than the exhibit, the  14 document from National Surety that talked  15 about choice of law, do you specifically  16 remember any of the other claim file  17 information from National Surety that you  18 reviewed in preparation for your  19 deposition?  20 <b>A. Are you asking about the claim</b>  21 <b>file notes?</b>  22 Q. Yeah, National Surety's.  23 <b>A. National Surety's. I don't recall</b>  24 <b>any specifics as to the notes.</b>  25 Q. So, in essence, as you sit here</p>	<p style="text-align: right;">Page 29</p> <p>1 right now, you basically recall the one note  2 that discusses the potential of Ohio law  3 applying?  4 <b>A. Correct.</b>  5 Q. I think you said you reviewed some  6 National Surety email correspondence?  7 <b>A. Correct. We recalled one.</b>  8 Q. Which is the one that you recall?  9 <b>A. I believe I recall an email from</b>  10 <b>Rick Harris to Ed Matushek, who was -- who is</b>  11 <b>Resinoid Engineering's national coordinating</b>  12 <b>counsel for asbestos matters.</b>  13 Q. And do you recall what that email  14 discussed?  15 <b>A. I believe it was discussing the</b>  16 <b>Ciokajlo claim.</b>  17 Q. And what aspect of the Ciokajlo  18 claim?  19 <b>A. I believe it was discussing Ed</b>  20 <b>Matushek's assessments and I believe</b>  21 <b>eagerness to settle the claim.</b>  22 Q. Was the email responding to an  23 email that Mr. Matushek had sent to all of  24 the claim handlers involved in resolving the  25 Resinoid-Ciokajlo case?</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 30..33

<p style="text-align: right;">Page 30</p> <p>1 <b>A. I believe it would have been.</b>  2 Q. Any other emails that you recall,  3 other than that one?  4 <b>A. I believe there was an email</b>  5 <b>from -- I believe it was -- yeah. I believe</b>  6 <b>there was an email from Rick Harris</b>  7 <b>suggesting that, as the claim progressed,</b>  8 <b>that the carrier should put together a cost</b>  9 <b>share with respect to any future settlements</b>  10 <b>in the Ciokajlo claim.</b>  11 Q. Was there a cost share in the  12 Ciokajlo claim? For the Ciokajlo claim?  13 MR. SCHULZE: Objection. Do you  14 mean defense or indemnity?  15 MR. DUNNE: Any.  16 <b>A. Yes. There was a cost of share</b>  17 <b>that the carriers were operating under for --</b>  18 <b>I believe since 2004 or thereabouts.</b>  19 BY MR. DUNNE:  20 Q. For defense?  21 <b>A. For defense.</b>  22 Q. And what was the allocation, if  23 you recall, for that cost share?  24 <b>A. It was based on each carrier's</b>  25 <b>time on the risk.</b></p>	<p style="text-align: right;">Page 31</p> <p>1 Q. And do you recall what period of  2 time -- strike that.  3 Was this cost share in writing?  4 <b>A. The cost share -- there was an</b>  5 <b>email, I believe, in and around 2004 -- well,</b>  6 <b>you know, I wouldn't say finalizing the cost</b>  7 <b>share. You know, providing, you know the</b>  8 <b>final allocation of the cost share to the</b>  9 <b>carriers.</b>  10 Q. Provided percentages?  11 <b>A. Correct.</b>  12 Q. Was there any formal document  13 called the cost share?  14 <b>A. I don't believe it was ever a</b>  15 <b>formal document.</b>  16 Q. And you've handled well -- strike  17 that.  18 Have you handled other asbestos  19 cases?  20 <b>A. Yes.</b>  21 Q. Do you recognize a term "cost  22 share"?  23 <b>A. Yes.</b>  24 Q. Have you seen them memorialized?  25 <b>A. Yes.</b></p>
<p style="text-align: right;">Page 32</p> <p>1 Q. And cost share is come in all  2 forms?  3 MR. SCHULZE: Objection to form.  4 <b>A. I'm not sure what you mean by "all</b>  5 <b>forms."</b>  6 Q. What do defense cost shares  7 usually address?  8 <b>A. Well, I mean, I would say it would</b>  9 <b>address the shares borne by each carrier.</b>  10 Q. And in your experience, are those  11 formalized agreements?  12 <b>A. I'm not sure what you mean by</b>  13 <b>"formalized agreements."</b>  14 Q. Sure. They have -- well, strike  15 that. I haven't asked your educational  16 background.  17 Are you familiar with cost shares  18 that have recitals, terms, and signatures of  19 the parties?  20 <b>A. Yes.</b>  21 Q. Okay. Was there any kind of a  22 document like that in this case?  23 <b>A. No.</b>  24 Q. So would you call the cost share,  25 as to defense in this case, an informal cost</p>	<p style="text-align: right;">Page 33</p> <p>1 share?  2 <b>A. Yes.</b>  3 Q. So I think we've talked about the  4 Harris and Matushek email, and then the email  5 involving Mr. Matushek. Any other emails  6 that you recall looking at in preparation?  7 National Surety. Sorry.  8 <b>A. Yeah. I believe that the only</b>  9 <b>other email I can recall was another email</b>  10 <b>from Rick Harris with respect to the cost</b>  11 <b>share for the Ciokajlo claim providing the</b>  12 <b>carrier representatives with the agreed-upon</b>  13 <b>shares.</b>  14 Q. Any other emails?  15 <b>A. Not that I recall.</b>  16 Q. So we talked about the emails and  17 the claim file, the claim file notes.  18 Any other National Surety  19 documents and the policies that you recall  20 looking at?  21 <b>A. I think that was it.</b>  22 Q. I should have done this a little  23 bit earlier. But can you briefly go through  24 your work history?  25 <b>A. Sure. How far back would you</b></p>



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 34..37

<p style="text-align: right;">Page 34</p> <p>1 like me to go?</p> <p>2 Q. Insurance work history. You don't</p> <p>3 look that old so. Probably not.</p> <p>4 <b>A. I've been working for Resolute</b></p> <p>5 <b>Management since April of 2016.</b></p> <p>6 Q. And all on Lamorak matters or</p> <p>7 difference insureds -- or different insurers?</p> <p>8 <b>A. Different insurers as well.</b></p> <p>9 Q. And did you start on Lamorak</p> <p>10 matters for April '16, with Resolute?</p> <p>11 <b>A. Yeah. There were Lamorak matters</b></p> <p>12 <b>on which I was working when I started.</b></p> <p>13 Q. And prior to Resolute?</p> <p>14 <b>A. What was I doing prior to</b></p> <p>15 <b>Resolute?</b></p> <p>16 Q. Yep.</p> <p>17 <b>A. I worked for approximately three</b></p> <p>18 <b>years for a company, Automated Business</b></p> <p>19 <b>Solutions.</b></p> <p>20 Q. So not in insurance?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. Is Resolute your first insurance</p> <p>23 job?</p> <p>24 <b>A. Correct.</b></p> <p>25 Q. God help you. Just on the</p>	<p style="text-align: right;">Page 35</p> <p>1 insurance job, not the Resolute.</p> <p>2 Can you briefly discuss your</p> <p>3 educational background?</p> <p>4 <b>A. Sure. From -- starting from --</b></p> <p>5 Q. College. Did you go to college?</p> <p>6 <b>A. I did.</b></p> <p>7 Q. Where did you graduate from and</p> <p>8 when?</p> <p>9 <b>A. I graduated from Drexel</b></p> <p>10 <b>University. I believe it would have been</b></p> <p>11 <b>June 2005.</b></p> <p>12 Q. Any postgraduate?</p> <p>13 <b>A. I did. Vermont Law School. I</b></p> <p>14 <b>would have graduated 2009.</b></p> <p>15 Q. Did you graduate?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And anything -- did you take any</p> <p>18 course work, or do anything to prepare you</p> <p>19 for your insurance job?</p> <p>20 <b>A. Yeah. I had to -- I took online</b></p> <p>21 <b>classes in preparation for obtaining an</b></p> <p>22 <b>adjustor's license.</b></p> <p>23 Q. And did you obtain your adjustor's</p> <p>24 license?</p> <p>25 <b>A. Yes.</b></p>
<p style="text-align: right;">Page 36</p> <p>1 Q. Congratulations. Some of the</p> <p>2 property stuff is kind of crazy.</p> <p>3 (Exhibit 2, Lamorak Insurance Company's</p> <p>4 Answer and Affirmative Defenses to First</p> <p>5 Amended Complaint, marked for</p> <p>6 identification.)</p> <p>7 Q. Ask you to briefly review this</p> <p>8 document, sir. And the question is: Have</p> <p>9 you seen it before?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Before -- is this one of the</p> <p>12 documents reviewed in preparation for your</p> <p>13 deposition today?</p> <p>14 <b>A. Yes, I reviewed this.</b></p> <p>15 Q. Before your preparation for your</p> <p>16 deposition today, had you seen this document?</p> <p>17 <b>A. Yes, I had.</b></p> <p>18 Q. Were you responsible for any of</p> <p>19 the answers to the allegations in terms of</p> <p>20 the information?</p> <p>21 Schulze: Objection. Form.</p> <p>22 BY MR. DUNNE:</p> <p>23 Q. Strike that. Did you provide any</p> <p>24 information responsive to the allegations in</p> <p>25 this Complaint?</p>	<p style="text-align: right;">Page 37</p> <p>1 Schulze: Objection. Foundation.</p> <p>2 BY MR. DUNNE:</p> <p>3 Q. You can answer.</p> <p>4 Schulze: Go ahead.</p> <p>5 <b>A. Yeah. I discussed with counsel</b></p> <p>6 <b>some of the substance involved in this</b></p> <p>7 <b>answer.</b></p> <p>8 BY MR. DUNNE:</p> <p>9 Q. Did you provide any of the factual</p> <p>10 information set forth in the answer?</p> <p>11 Schulze: Objection.</p> <p>12 BY MR. DUNNE:</p> <p>13 Q. To Counsel?</p> <p>14 <b>A. Yes, I did.</b></p> <p>15 Q. And what factual information did</p> <p>16 you provide?</p> <p>17 <b>A. I provided a factual, I would say</b></p> <p>18 <b>summary of the Ciokajlo claim and the</b></p> <p>19 <b>ultimate notice -- when we received notice</b></p> <p>20 <b>that National Surety had filed a complaint</b></p> <p>21 <b>against Lamorak Insurance Company.</b></p> <p>22 Q. Can you call your attention to</p> <p>23 paragraph 7 and specifically Lamorak's</p> <p>24 answer?</p> <p>25 (Witness reviewing document.)</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 38..41

<p style="text-align: right;">Page 38</p> <p>1 <b>A. Sure.</b> 2 Q. And then can I ask you to go to 3 Exhibit A and review Mr. Herbst's testimony? 4 MR. DUNNE: Oh, it's not attached. 5 MR. SCHULZE: Objection to form. 6 <b>THE WITNESS: Would it be all</b> 7 <b>right if we took a short break while</b> 8 <b>you're searching for that?</b> 9 MR. DUNNE: Sure. 10 <b>THE WITNESS: Thank you.</b> 11 (Recess taken at 2:52 p.m. to 2:57 p.m.) 12 BY MR. DUNNE: 13 Q. Looking at Lamorak's answer, 14 sir -- actually, I want you to look at 15 paragraph 19. 16 <b>A. Nineteen, okay.</b> 17 BY MR. DUNNE: 18 Q. And let me know when you get a 19 chance to look at it. 20 Sir, have you had a chance to 21 review allegation 19 and Lamorak's answer? 22 <b>A. I have.</b> 23 Q. And I think you said earlier that 24 one of the things that you do on behalf of 25 Lamorak is investigate coverage. Is that a</p>	<p style="text-align: right;">Page 39</p> <p>1 fair statement? 2 <b>A. Yes.</b> 3 Q. And primarily with regard to 4 asbestos matters? 5 <b>A. I would say that's a fair</b> 6 <b>characterization.</b> 7 Q. What percent of your work is 8 asbestos claim versus something else? 9 <b>A. I'd say perhaps 60 percent of the</b> 10 <b>claims I have are asbestos.</b> 11 Q. And have you received any 12 on-the-job training at Resolute with regard 13 to the investigation of coverage? 14 <b>A. Yes.</b> 15 Q. In your training, have you ever 16 learned anything about a concept called 17 "trigger"? 18 <b>A. Yes.</b> 19 Q. Can you explain to me what 20 "trigger" is? 21 <b>A. My understanding is -- and this is</b> 22 <b>an issue of law, but my understanding is that</b> 23 <b>"trigger" is a term whereby a policy's</b> 24 <b>obligations are initiated based on, I would</b> 25 <b>say, the facts of a claim.</b></p>
<p style="text-align: right;">Page 40</p> <p>1 Q. And in each case or each claim you 2 review the facts to determine whether or not 3 the coverage may or may not be triggered? 4 <b>A. Yes.</b> 5 Q. And every claim is different? 6 <b>A. Correct.</b> 7 Q. And while it's maybe an issue of 8 law, it's something you do on a regular 9 basis, as part of your duties and 10 responsibilities to establish if a claim may 11 or may not trigger your client's coverage? 12 <b>A. Correct.</b> 13 Q. And do you have an understanding 14 as to whether or not there are different 15 approaches to trigger with regard to asbestos 16 claims? 17 <b>A. Sure.</b> 18 Q. And what is your understanding of 19 the trigger methods, if you will, for 20 asbestos claims? 21 <b>A. My understanding is that it can</b> 22 <b>vary.</b> 23 Q. Okay. And how can it vary? 24 <b>A. My understanding is that there are</b> 25 <b>different theories. I believe one is called</b></p>	<p style="text-align: right;">Page 41</p> <p>1 <b>a continuous trigger.</b> 2 Q. And can you describe that, please, 3 how that works? 4 <b>A. My understanding is that a</b> 5 <b>continuous trigger would be that a date of</b> 6 <b>first exposure would thereby trigger coverage</b> 7 <b>for the policies -- that current policy and</b> 8 <b>the subsequent policies, whether issued by</b> 9 <b>one carrier or multiple carriers.</b> 10 Q. And is there an end date for the 11 policies that are triggered? 12 <b>A. It depends.</b> 13 Q. It depends on what? 14 <b>A. For instance, if a policy had an</b> 15 <b>asbestos exclusion.</b> 16 Q. So the policies that would be 17 triggered in that example would be from first 18 exposure to the policy that has an asbestos 19 exclusion? 20 <b>A. Sure.</b> 21 Q. And any other approaches to 22 trigger other than continuous? 23 <b>A. I believe there is a theory. I</b> 24 <b>think it's called a triple trigger.</b> 25 Q. All right. And what is your</p>



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 42..45

<p style="text-align: right;">Page 42</p> <p>1 understanding of a "triple trigger"?</p> <p>2 <b>A. I believe my understanding is that</b></p> <p>3 <b>it is a trigger of exposure -- I want to</b></p> <p>4 <b>say -- I mean, I'm not -- you know, I'm not</b></p> <p>5 <b>sure if this is -- feels like this is a bit</b></p> <p>6 <b>of a law exam, but it's to say injury or</b></p> <p>7 <b>manifestation, and to be honest, I can't</b></p> <p>8 <b>remember the third trigger.</b></p> <p>9 Q. Okay. Would it be disease? Does</p> <p>10 that sound familiar?</p> <p>11 <b>A. Yeah, that sounds familiar.</b></p> <p>12 Q. And what makes it a triple</p> <p>13 trigger, if you know?</p> <p>14 MR. SCHULZE: Objection. And just</p> <p>15 for the record, I think it's clear, but</p> <p>16 these questions are about Mr Gardner</p> <p>17 personally?</p> <p>18 MR. DUNNE: Yeah. Absolutely.</p> <p>19 I'm not asking --</p> <p>20 MR. SCHULZE: Not Lamorak's</p> <p>21 understanding of triggering but</p> <p>22 Mr. Gardner's?</p> <p>23 MR. DUNNE: Yeah.</p> <p>24 <b>THE WITNESS: My understanding is</b></p> <p>25 <b>that the-- each policies -- or all the</b></p>	<p style="text-align: right;">Page 43</p> <p>1 <b>policies during that trigger period</b></p> <p>2 <b>would -- it would trigger those policy's</b></p> <p>3 <b>obligations.</b></p> <p>4 BY MR. DUNNE:</p> <p>5 Q. And how is that different, if you</p> <p>6 know, from a continuous trigger?</p> <p>7 <b>A. My understanding is there could be</b></p> <p>8 <b>gaps in between coverage, which policies</b></p> <p>9 <b>would be obligated to respond.</b></p> <p>10 Q. And we've talked about continuous</p> <p>11 triple. Do you have any understanding of any</p> <p>12 other trigger approaches?</p> <p>13 <b>A. I believe there are. Off the top</b></p> <p>14 <b>of my head, I can't recall the specifics as</b></p> <p>15 <b>to any others.</b></p> <p>16 Q. Have you also heard the triple</p> <p>17 trigger called the Raymark trigger?</p> <p>18 <b>A. I believe so, yes.</b></p> <p>19 Q. And have you heard it called that</p> <p>20 in the context of this case, or have you</p> <p>21 heard about that trigger before this case?</p> <p>22 <b>A. I believe I've heard it before</b></p> <p>23 <b>this case.</b></p> <p>24 MR. DUNNE: Off the record.</p> <p>25 (Off-the-record discussion.)</p>
<p style="text-align: right;">Page 44</p> <p>1 (Exhibit 3, Bates Nos. NSCLM009436 through</p> <p>2 -9441, marked for identification.)</p> <p>3 BY MR. DUNNE:</p> <p>4 Q. I'll ask you, have you ever seen</p> <p>5 this?</p> <p>6 <b>A. I have.</b></p> <p>7 Q. For the record, it's a letter</p> <p>8 dated March 17, 2017, with the National</p> <p>9 Surety Bates No. 9436. I ask you to look at</p> <p>10 page 3. And if you want to peruse the</p> <p>11 insurer agreement language.</p> <p>12 (Witness reviewing document.)</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. Have you dealt with policies with</p> <p>15 an insuring agreement like this?</p> <p>16 <b>A. I don't know if it's these exact</b></p> <p>17 <b>wording, but yeah, similar wording.</b></p> <p>18 Q. All right. If you go down to "b."</p> <p>19 <b>A. Uh-huh.</b></p> <p>20 Q. Are you familiar with the policy</p> <p>21 language in b2, which states that "the</p> <p>22 'bodily injury' and 'property damage' occurs</p> <p>23 during the policy period"?</p> <p>24 <b>A. Yes, I am.</b></p> <p>25 Q. And then go to page 4, the</p>	<p style="text-align: right;">Page 45</p> <p>1 definition of "'Body Injury,'" it says,</p> <p>2 "means bodily injury, sickness or disease..."</p> <p>3 Do you see that language?</p> <p>4 <b>A. Yes, I do.</b></p> <p>5 Q. So when we were talking about</p> <p>6 triple trigger language, is this your</p> <p>7 understanding of what the triple trigger</p> <p>8 language comes from, body injury, sickness or</p> <p>9 disease?</p> <p>10 MR. SCHULZE: Objection to form.</p> <p>11 <b>A. I'm not sure what you mean by</b></p> <p>12 <b>where it comes from.</b></p> <p>13 BY MR. DUNNE:</p> <p>14 Q. I'm just asking. Do you have an</p> <p>15 understanding that the triple trigger is</p> <p>16 derived from policy language?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And I'm just asking if you're</p> <p>19 aware that the triple trigger policy language</p> <p>20 that it's derived from is set forth in</p> <p>21 definition number 3, bodily injury?</p> <p>22 MR. SCHULZE: Objection to</p> <p>23 foundation.</p> <p>24 BY MR. DUNNE:</p> <p>25 Q. Just if you know.</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 46..49

<p>Page 46</p> <p>1 <b>A. Yeah. I believe that that would</b> 2 <b>be found in that language.</b> 3 Q. So if you could, please go down to 4 second paragraph under "Coverage Analysis." 5 And I want to ask you, if you look in the 6 middle, it talks about bodily injury that is 7 exposure to Resinoid's asbestos-containing 8 product." 9 Do you see that? 10 <b>A. Yes.</b> 11 Q. Based on your understanding of the 12 triple trigger and its use of exposure, do 13 you understand bodily injury to mean 14 exposure, as it's set forth here? Or do you 15 have a different understanding? 16 <b>A. I'm sorry. Can you say that</b> 17 <b>again?</b> 18 Q. Sure. So we talked about 19 definition of triple trigger equaling bodily 20 injury, sickness or disease. Is that a fair 21 statement? 22 <b>A. Yes.</b> 23 Q. So I'm just trying to get at what 24 each of those terms mean to you. So I am 25 just trying to understand whether or not you</p>	<p>Page 47</p> <p>1 understand bodily injury to mean exposure, if 2 you have an understanding? 3 <b>A. Are you asking me if my</b> 4 <b>understanding is bodily injury means</b> 5 <b>exposure?</b> 6 Q. Correct. 7 <b>A. Yeah. I mean, I suppose that's</b> 8 <b>one interpretation.</b> 9 Q. Do you know what else bodily 10 injury could mean? 11 <b>A. I would imagine bodily injury</b> 12 <b>could mean a lot of different things.</b> 13 Q. For trigger purposes -- strike 14 that. 15 Have you ever applied a triple 16 trigger in any of your claims? 17 MR. SCHULZE: Objection to form. 18 <b>A. I don't believe so.</b> 19 BY MR. DUNNE: 20 Q. Do you recall ever applying -- 21 ever having an asbestos claim emanating from 22 an Illinois insured? 23 <b>A. Are you asking whether I've had a</b> 24 <b>claim where the insured's based in Illinois?</b> 25 Q. Yes.</p>
<p>Page 48</p> <p>1 <b>A. I'm sure I have.</b> 2 Q. And I'm just trying to see -- 3 trying to jog your memory to see if maybe you 4 ever considered applying triple trigger and 5 what that means? 6 <b>A. Again, I think I've indicated that</b> 7 <b>I have not applied the triple trigger on any</b> 8 <b>claim that I have managed.</b> 9 Q. And so you don't, as you sit here 10 today -- well, strike that. 11 So looking at paragraph 19 of the 12 Complaint, Exhibit 2, paragraph 19. 13 <b>A. Okay.</b> 14 Q. And I'll ask you -- you see 15 Lamorak denied each and every allegation of 16 fact contained in paragraph 19? 17 <b>A. Yeah, I see where it says that.</b> 18 Q. And if I ask you to assume that 19 bodily injury means exposure, does Lamorak 20 have any facts that indicate to you that 21 Mr. Ciokajlo was exposed to Resinoid's 22 asbestos-containing products between 1994 and 23 2000? 24 MR. SCHULZE: Objection to form. 25 <b>A. Are you asking me whether I am</b></p>	<p>Page 49</p> <p>1 <b>aware of any evidence -- trying to think.</b> 2 <b>Can you repeat the question?</b> 3 BY MR. DUNNE: 4 Q. Sure. I'm make it easier. You've 5 handled the Ciokajlo claim for a while? 6 <b>A. Yes.</b> 7 Q. And I'm simply asking, are you 8 aware of any facts that would indicate that 9 Mr. Ciokajlo was exposed to 10 asbestos-containing products created by 11 Resinoid between 1994 and 2000? 12 <b>A. I'm not aware of any specific --</b> 13 <b>I'm not aware that he was exposed to asbestos</b> 14 <b>during that period, no.</b> 15 Q. And my question is: You're 16 Lamorak's witness. Is that Lamorak's 17 position? 18 <b>A. Yes, that would be Lamorak's</b> 19 <b>position.</b> 20 Q. And going back to the March 21 letter, Exhibit 3, with regard to sickness. 22 <b>A. Sorry. What page are we on?</b> 23 Q. Page 4, that big paragraph again. 24 <b>A. Yep.</b> 25 Q. I want you to assume for my next</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 50..53

<p style="text-align: right;">Page 50</p> <p>1 question that sickness equals ill-health or 2 weakened or unsound condition related to 3 asbestos exposure? 4 <b>A. Sorry. Can you say that again?</b> 5 Q. Sure. For my next question, I 6 want to you assume that sickness equals 7 ill-health or a weakened or unsound condition 8 related to an asbestos exposure. 9 <b>A. Okay.</b> 10 Q. Is Lamorak aware of any facts that 11 would indicate that Mr. Ciokajlo -- 12 MR. SCHULZE: Go off the record. 13 (Off-the-record discussion.) 14 MR. DUNNE: Back on the record. 15 BY MR. DUNNE: 16 Q. Start over. Is Lamorak aware of 17 any facts that would indicate that 18 Mr. Ciokajlo -- thank you -- had any 19 ill-health or weakened or unsound condition 20 related to asbestos during the period 1994 to 21 2000? 22 <b>A. Can I --</b> 23 MR. SCHULZE: I'm sorry. I just 24 want to make sure I heard the question 25 exactly right. Can you just read back</p>	<p style="text-align: right;">Page 51</p> <p>1 the question that's pending? 2 MR. DUNNE: I'll restate it. I'll 3 do it again. 4 BY MR. DUNNE: 5 Q. Is Lamorak aware that Mr. Ciokajlo 6 suffered from any ill-health, or weakened, or 7 unsound condition related to asbestos during 8 the period between 1994 and 2000? 9 <b>A. Are you asking whether he had any</b> 10 <b>symptoms or any -- I'm not sure -- so</b> 11 <b>you're -- are you asking whether he had any</b> 12 <b>symptoms or any ill-health related to his</b> 13 <b>exposure to asbestos?</b> 14 Q. I'll ask you a different way. 15 Do you recall reading 16 Mr. Ciokajlo's deposition concerning his 17 mesothelioma? 18 <b>A. Yeah, I've read that.</b> 19 Q. And didn't he, in essence, testify 20 that he was as healthy as a horse shortly 21 before he was diagnosed with mesothelioma? 22 <b>A. I believe, yeah. I'm not sure he</b> 23 <b>used those words, but I believe he testified</b> 24 <b>that yeah, he's generally healthy.</b> 25 Q. And do you recall when he was</p>
<p style="text-align: right;">Page 52</p> <p>1 diagnosed with meso? 2 <b>A. I believe he was diagnosed in</b> 3 <b>2015.</b> 4 Q. So my question -- going back to my 5 question is: Did Mr. Ciokajlo testify that 6 he had any ill-health or weakened conditions 7 related to asbestos between 1994 and 2000? 8 <b>A. I don't recall him testifying to</b> 9 <b>that.</b> 10 Q. And is Lamorak aware of any facts 11 that would indicate that he suffered from any 12 ill-health or unsound conditions related to 13 asbestos exposure between 1994 and 2000? 14 <b>A. I don't believe -- I believe the</b> 15 <b>testimony that says that he was diagnosed in</b> 16 <b>2015, that probably is all we have.</b> 17 Q. All right. So the answer is no, 18 you're not aware of any facts? 19 <b>A. I'm not aware of any additional</b> 20 <b>facts, during that period.</b> 21 Q. All right. Sir, if you could turn 22 to your affirmative defenses. 23 <b>A. Okay.</b> 24 Q. All right. And turning to the 25 fourth affirmative defense.</p>	<p style="text-align: right;">Page 53</p> <p>1 <b>A. Okay.</b> 2 Q. All right. Do you have an 3 understanding of what waiver is? 4 <b>A. I mean, I have a general</b> 5 <b>understanding of the concept.</b> 6 Q. What is your general understanding 7 of waiver? 8 <b>A. My understanding would be you give</b> 9 <b>up a right.</b> 10 Q. And is it Lamorak's contention 11 that National Surety gave up a right with 12 regard to seeking reimbursement of the 13 indemnity paid on the Ciokajlo matter? 14 MR. SCHULZE: Objection to form. 15 <b>A. So can you repeat the question?</b> 16 MR. DUNNE: Can you read it back, 17 please? 18 THE REPORTER: "And is it 19 Lamorak's contention that National 20 Surety gave up a right with regard to 21 seeking reimbursement of the indemnity 22 paid on the Ciokajlo matter?" 23 <b>THE WITNESS: I'm not quite sure I</b> 24 <b>understand the question.</b> 25 BY MR. DUNNE:</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 54..57

<p style="text-align: right;">Page 54</p> <p>1 Q. Well, sure. So looking at the 2 fourth affirmative defense. 3 <b>A. Yes.</b> 4 Q. And it says, "Plaintiff," that's 5 us, National Surety, "claims may be barred, 6 in whole or in part, by the doctrines," and 7 we're going to go through each one of these. 8 And I'm starting with the first 9 one, "Waiver." And I'm trying to understand 10 whether or not -- we're ten days away from 11 discovery, whether or not Lamorak believes 12 that National Surety waived its ability to 13 seek reimbursement of the indemnity paid on 14 the Ciokajlo case. 15 And then my next question would be 16 based on what facts? 17 So the first question is: Is that 18 your contention? Is that Lamorak's 19 contention? 20 MR. SCHULZE: Objection to form. 21 <b>A. This is -- first off, this -- the</b> 22 <b>document here was produced by counsel. I</b> 23 <b>provided claim files and claim information</b> 24 <b>and the substance that went into this. I'm</b> 25 <b>not certain that that is what that</b></p>	<p style="text-align: right;">Page 55</p> <p>1 <b>affirmative defense was referring to.</b> 2 Q. Okay. So what is your 3 understanding that that affirmative defense 4 relates to? 5 <b>A. My understanding -- can you repeat</b> 6 <b>your prior question regarding reimbursement?</b> 7 Q. So can we both agree that it's 8 National Surety's position that it doesn't 9 owe indemnity or defense for the Ciokajlo 10 matter because it didn't trigger the National 11 Surety policies? 12 <b>A. That is my understanding, that the</b> 13 <b>position -- that is the position that</b> 14 <b>National Surety is taking, correct.</b> 15 Q. But National Surety contributed to 16 the settlement of the Ciokajlo matter? 17 <b>A. Correct.</b> 18 MR. SCHULZE: Can I -- I'm sorry 19 to interrupt. I should have done this 20 at the beginning. I don't mean to ruin 21 your flow. But just like we did with 22 Mr. Harris, I want to make a note for 23 the record that this deposition should 24 be -- 25 MR. DUNNE: Confidential.</p>
<p style="text-align: right;">Page 56</p> <p>1 MR. SCHULZE: Confidential 2 subjective to protective order. 3 MR. DUNNE: So agreed. 4 MR. SCHULZE: I should have done 5 that a long time ago. Sorry for doing 6 it until now. 7 MR. DUNNE: No problem. 8 BY MR. DUNNE: 9 Q. So we've agreed that National 10 Surety said -- that Ciokajlo may not be 11 covered? 12 <b>A. Correct. That's their position,</b> 13 <b>correct.</b> 14 Q. And we've looked at the 15 reservation of rights where it said why? 16 <b>A. Yes.</b> 17 Q. And then National Surety paid some 18 money, contributed toward the settlement? 19 <b>A. Correct.</b> 20 Q. So my question is simply: Is it 21 Lamorak's contention that National Surety 22 gave -- in your words, gave up its right to 23 seek reimbursement for the money it paid in 24 settlements and defense of what National 25 Surety contends is an uncovered claim?</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. SCHULZE: Objection to form. 2 <b>A. Again, it's not my understanding</b> 3 <b>with respect to reimbursement, no.</b> 4 BY MR. DUNNE: 5 Q. So it's Lamorak's position that 6 National Surety did not waive its right to 7 seek reimbursement of indemnity? 8 <b>A. No, that's not correct.</b> 9 Q. Okay. So I misunderstood your 10 answer? 11 <b>A. Correct.</b> 12 Q. What is your understanding? 13 <b>A. My understanding is that -- and</b> 14 <b>I've been called here to provide factual</b> 15 <b>basis. My understanding is that National</b> 16 <b>Surety had a practice -- or I should say</b> 17 <b>Allianz on behalf of National Surety had</b> 18 <b>participated, as a carrier, defending</b> 19 <b>Resinoid asbestos claims, under a cost share</b> 20 <b>for 14 years or so, without objection.</b> 21 <b>They had previously indemnified</b> 22 <b>Resinoid on another claim that was located in</b> 23 <b>Ohio. It was actually, I believe the same</b> 24 <b>cost share as to indemnity, as the Ciokajlo</b> 25 <b>claim, and they did not object to that cost</b></p>



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 58..61

<p style="text-align: right;">Page 58</p> <p>1 share.</p> <p>2 <b>The National Surety rep or</b></p> <p>3 <b>Allianz's rep did not issue an ROR when the</b></p> <p>4 <b>Ciokajlo claim was noticed. I believe the</b></p> <p>5 <b>first specific reservation or objection to</b></p> <p>6 <b>any matter relating to Ciokajlo took -- did</b></p> <p>7 <b>not take place until 2017.</b></p> <p>8 <b>My understanding is that National</b></p> <p>9 <b>Surety would have known, as far as back as</b></p> <p>10 <b>2015, the facts in the Ciokajlo claim with</b></p> <p>11 <b>respect to exposure and bodily injury, which</b></p> <p>12 <b>is the substance of their argument that they</b></p> <p>13 <b>are not responsible now for indemnifying</b></p> <p>14 <b>Resinoid.</b></p> <p>15 MR. DUNNE: Can you read that</p> <p>16 answer back, please?</p> <p>17 THE REPORTER: "My understanding</p> <p>18 is that -- and I've been called here to</p> <p>19 provide factual basis. My understanding</p> <p>20 is that National Surety had a</p> <p>21 practice -- or I should say Allianz on</p> <p>22 behalf of National Surety had</p> <p>23 participated, as a carrier, defending</p> <p>24 Resinoid asbestos claims, under a cost</p> <p>25 share for 14 years or so, without</p>	<p style="text-align: right;">Page 59</p> <p>1 objection.</p> <p>2 They had previously indemnified</p> <p>3 Resinoid on another claim that was</p> <p>4 located in Ohio. It was actually, I</p> <p>5 believe the same cost share as to</p> <p>6 indemnity, as the Ciokajlo claim, and</p> <p>7 they did not object to that cost share.</p> <p>8 The National Surety rep or</p> <p>9 Allianz's rep did not issue an ROR when</p> <p>10 the Ciokajlo claim was noticed. I</p> <p>11 believe the first specific reservation</p> <p>12 or objection to any matter relating to</p> <p>13 Ciokajlo took -- did not take place</p> <p>14 until 2017.</p> <p>15 My understanding is that National</p> <p>16 Surety would have known, as far as back</p> <p>17 as 2015, the facts in the Ciokajlo claim</p> <p>18 with respect to exposure and bodily</p> <p>19 injury, which is the substance of their</p> <p>20 argument that they are not responsible</p> <p>21 now for indemnifying Resinoid."</p> <p>22 BY MR. DUNNE:</p> <p>23 Q. And, sir, would your answer change</p> <p>24 if it were true that the first time National</p> <p>25 Surety could rule out exposure to</p>
<p style="text-align: right;">Page 60</p> <p>1 Resinoid-containing products or Resinoid's</p> <p>2 products was in March of 2017?</p> <p>3 MR. SCHULZE: Objection to form.</p> <p>4 <b>A. Are you asking my opinion or</b></p> <p>5 <b>Lamorak's? I'm not sure which entity you're</b></p> <p>6 <b>--</b></p> <p>7 Q. Lamorak's.</p> <p>8 MR. SCHULZE: Same objection.</p> <p>9 Go ahead.</p> <p>10 <b>A. Lamorak hasn't taken a position as</b></p> <p>11 <b>to what would have -- what the result would</b></p> <p>12 <b>be today if National Surety had issued an ROR</b></p> <p>13 <b>or taken the position in 2015.</b></p> <p>14 Q. Okay. So let's go back. I think</p> <p>15 we confirmed that, in June of 2016, you took</p> <p>16 over this case?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. And at that time it was in</p> <p>19 discovery?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. Was anybody asking you for</p> <p>22 indemnity dollars at that time?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Do you have a recollection when</p> <p>25 somebody started asking for indemnity</p>	<p style="text-align: right;">Page 61</p> <p>1 dollars?</p> <p>2 <b>A. Well, I mean, what do you mean</b></p> <p>3 <b>when you say requesting indemnity dollars?</b></p> <p>4 Q. Well, do you recall when an</p> <p>5 authority request was made?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And when was that?</p> <p>8 <b>A. I believe the first one would have</b></p> <p>9 <b>been December of 2016.</b></p> <p>10 Q. And in your experience as a claims</p> <p>11 handler, in a case where you've accepted the</p> <p>12 defense, do you have to make -- when do you</p> <p>13 make an determination as to whether or not</p> <p>14 you may or may not owe indemnity?</p> <p>15 MR. SCHULZE: Objection. Form.</p> <p>16 <b>A. I mean, when, as the claims</b></p> <p>17 <b>handler, you're asking would I make a</b></p> <p>18 <b>determination as to whether I owed indemnity?</b></p> <p>19 Q. Correct.</p> <p>20 <b>A. I would suppose that depend.</b></p> <p>21 Q. Okay. What does it depend on?</p> <p>22 <b>A. Well, if we determine there was no</b></p> <p>23 <b>coverage to begin with and we weren't going</b></p> <p>24 <b>to defend a claim, then I suppose we would</b></p> <p>25 <b>have then, at that time, determined that we</b></p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 62..65

<p style="text-align: right;">Page 62</p> <p>1 <b>would not pay indemnity on that claim.</b>  2 Q. And what about a claim where  3 you're defending under a reservation of  4 rights?  5 <b>A. I suppose that would depend.</b>  6 Q. Would be it depend on facts, the  7 facts of the claim?  8 <b>A. Correct.</b>  9 Q. And would you agree with me that  10 when you decide indemnity, you base that on  11 the facts of the claim?  12 <b>A. Correct.</b>  13 Q. And when you decide defense,  14 that's based on the allegations of the  15 Complaint, generally?  16 <b>A. I'm sorry. Say that again.</b>  17 Q. When you decide defense, it's  18 based, generally, on the allegations of the  19 Complaint?  20 <b>A. Correct. I would say that is</b>  21 <b>correct.</b>  22 Q. So if the facts relevant to  23 indemnity for the Ciokajlo matter weren't  24 conclusively known until 2017, in your  25 experience, would an indemnity decision have</p>	<p style="text-align: right;">Page 63</p> <p>1 been made?  2 MR. SCHULZE: Objection to form.  3 <b>A. I'm not sure I understand the</b>  4 <b>question.</b>  5 BY MR. DUNNE:  6 Q. Sure. We can agree that facts are  7 important for determining whether indemnity  8 is owed?  9 <b>A. Correct.</b>  10 Q. And until all the facts relevant  11 to that indemnity decision are known, you  12 can't make a determination as to indemnity;  13 correct?  14 <b>A. I don't know if I'd say that's</b>  15 <b>correct.</b>  16 Q. Okay. What do you not agree with  17 in that sentence?  18 <b>A. That you would need every single</b>  19 <b>fact of a claim to know whether indemnity</b>  20 <b>would be owed.</b>  21 Q. Okay. But for purposes of  22 trigger, all right, if you're having to  23 determine bodily injury, sickness or disease,  24 those are significant relevant facts, the  25 facts of bodily injury, sickness or disease?</p>
<p style="text-align: right;">Page 64</p> <p>1 <b>A. Are you asking if those are</b>  2 <b>relevance facts in any given claim?</b>  3 Q. No. In an asbestos claim, if  4 you're going to pay indemnity, you need to  5 determine whether or not bodily injury,  6 sickness or disease happened during your  7 policy period?  8 MR. SCHULZE: Objection to form  9 and foundation.  10 <b>A. I suppose that those would be</b>  11 <b>elements that you would consider.</b>  12 BY MR. DUNNE:  13 Q. Could you make a determination  14 without those elements, facts supporting each  15 of those elements?  16 MR. SCHULZE: Same objections.  17 <b>A. Could you -- are you asking</b>  18 <b>whether you could make a determination on</b>  19 <b>indemnity without --</b>  20 Q. Knowing your policy is triggered.  21 <b>A. I suppose you could not know.</b>  22 Q. With regard to the facts  23 supporting Lamorak's waiver contention, I  24 think you mentioned the cost share?  25 <b>A. Correct.</b></p>	<p style="text-align: right;">Page 65</p> <p>1 Q. The cost share was with regard to  2 defense; is that correct?  3 <b>A. There was a cost share with</b>  4 <b>respect to defense and there was a prior cost</b>  5 <b>share with respect to indemnity, and then</b>  6 <b>there was a cost share with respect to</b>  7 <b>indemnity particular to each Ciokajlo claim.</b>  8 Q. And when you say "a cost share,"  9 not a formal agreement?  10 <b>A. Correct.</b>  11 Q. And with regard to the Ciokajlo  12 claim, what cost share are you referring to?  13 <b>A. I believe Rick Harris suggested, I</b>  14 <b>want to say in or around December 2016, that</b>  15 <b>the carriers agree to a specific cost share</b>  16 <b>for indemnity purposes. I believe that's my</b>  17 <b>understanding.</b>  18 Q. But isn't it true that after that  19 cost share was suggested, you suggested a  20 different cost share?  21 <b>A. I don't know as I suggested a</b>  22 <b>different cost share. No.</b>  23 Q. I apologize. I have only one  24 copy.  25 MR. DUNNE: Can we take a quick</p>



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 66..69

<p style="text-align: right;">Page 66</p> <p>1 break?</p> <p>2 MR. SCHULZE: Sure.</p> <p>3 (Recess taken at 3:37 p.m. to 3:38 p.m.)</p> <p>4 MR. DUNNE: We can go back on, and</p> <p>5 I'll jump back in when she comes in.</p> <p>6 BY MR. DUNNE:</p> <p>7 Q. I think one of the other facts</p> <p>8 that you mentioned to support your waiver</p> <p>9 contention is that there was a cost share</p> <p>10 with regard to the Christianson (sic) claim?</p> <p>11 The Christian -- yeah, Christianson claim?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. I think you said it was another</p> <p>14 claim. But now do you recall it was the</p> <p>15 Christianson claim?</p> <p>16 <b>A. Yeah. I believe that was the name</b></p> <p>17 <b>of the Plaintiff.</b></p> <p>18 Q. Okay. And I think earlier you</p> <p>19 said that indemnity is dealt with on a</p> <p>20 claim-by-claim bases?</p> <p>21 <b>A. I don't recall saying that.</b></p> <p>22 Q. Would you agree that each claim is</p> <p>23 dealt with on a claim-by-claim basis?</p> <p>24 MR. SCHULZE: For the purposes of</p> <p>25 indemnification?</p>	<p style="text-align: right;">Page 67</p> <p>1 MR. DUNNE: Just generally.</p> <p>2 <b>A. Generally, sure.</b></p> <p>3 BY MR. DUNNE:</p> <p>4 Q. And for purposes of defense? We</p> <p>5 talked about the allegations.</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. And for purposes of indemnity, the</p> <p>8 facts of each case are different; correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. And if you knew that the</p> <p>11 circumstances with regard to the knowledge of</p> <p>12 when Resinoid stopped manufacturing</p> <p>13 asbestos-containing products was incomplete</p> <p>14 at the time of the Christianson matter, would</p> <p>15 that change your opinion as to whether or not</p> <p>16 that -- the payment of that claim impacted</p> <p>17 the waiver case?</p> <p>18 <b>A. I'm not sure I understand the</b></p> <p>19 <b>question.</b></p> <p>20 Q. Sure. If you didn't -- is it</p> <p>21 Lamorak's position that if the facts were not</p> <p>22 complete at the time of the Christianson</p> <p>23 settlement to support a denial, that the</p> <p>24 document was -- that the payment -- strike</p> <p>25 that.</p>
<p style="text-align: right;">Page 68</p> <p>1 Is it Lamorak's position that a</p> <p>2 payment on a claim where the facts do not</p> <p>3 support a denial -- well, strike that. Never</p> <p>4 mind.</p> <p>5 As you sit here today, are you</p> <p>6 aware whether or not Allianz -- sorry --</p> <p>7 strike that -- National Surety issued a</p> <p>8 reservation of rights with regard to the</p> <p>9 Christianson claim?</p> <p>10 <b>A. I am not aware if they issued a</b></p> <p>11 <b>specific ROR to the Christianson claim.</b></p> <p>12 (Exhibit 4, Bates Nos. NSCLM000187 through</p> <p>13 -0189, marked for identification.)</p> <p>14 MR. DUNNE: Thank you.</p> <p>15 BY MR. DUNNE:</p> <p>16 Q. Have you seen that one before?</p> <p>17 <b>A. I'm not sure whether I've seen</b></p> <p>18 <b>this before.</b></p> <p>19 Q. Okay. Well, for the record, it's</p> <p>20 a document dated July 10, 2003, regarding</p> <p>21 Darryl and Vanessa Christian, National Surety</p> <p>22 Bates 187 to 189.</p> <p>23 Can you briefly review this and</p> <p>24 specifically look at the first paragraph on</p> <p>25 page 2?</p>	<p style="text-align: right;">Page 69</p> <p>1 <b>A. The first full paragraph on page</b></p> <p>2 <b>2?</b></p> <p>3 Q. No. The first paragraph.</p> <p>4 Specifically beginning on the fourth line.</p> <p>5 It says, "Fireman Fund's Insurance Company's</p> <p>6 position is that its policy will not respond</p> <p>7 for damages because of bodily injury,</p> <p>8 sickness or disease, which actually results</p> <p>9 during the policies."</p> <p>10 Did I say that right?</p> <p>11 <b>A. Yep.</b></p> <p>12 Q. "And that will not responded</p> <p>13 damages because of bodily injury, sickness or</p> <p>14 disease, which results outside of the policy</p> <p>15 periods from a cause which takes place during</p> <p>16 the policy periods."</p> <p>17 Do you see that language?</p> <p>18 <b>A. I see that written here, yes.</b></p> <p>19 Q. And do you understand that</p> <p>20 language to be a reservation of rights?</p> <p>21 <b>A. I'm sorry. Was that a question?</b></p> <p>22 Q. Yeah.</p> <p>23 <b>A. Do I understand that language to</b></p> <p>24 <b>be a reservation of rights?</b></p> <p>25 Q. Right.</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 70..73

<p style="text-align: right;">Page 70</p> <p>1 <b>A. That would be my understanding.</b>  2 Q. Okay. And that's reserving the  3 right, as we've been talking about, if their  4 policies are not triggered? In other words,  5 if there's no bodily injury, sickness or  6 disease during the policy period. Would you  7 agree with me on that?  8 <b>A. I believe that's what it says</b>  9 <b>here, yep.</b>  10 Q. Okay. So have you ever handled a  11 claim where you reserve rights yet you still  12 paid indemnity?  13 <b>A. Are you asking if I've ever</b>  14 <b>specifically issued a reservation of rights</b>  15 <b>and paid indemnity?</b>  16 Q. Yeah. Decided to pay indemnity.  17 <b>A. I can't think of a specific case,</b>  18 <b>as I sit here.</b>  19 Q. Does the fact that now you're  20 seeing that National Surety issued a  21 reservation of rights with regard to  22 Christian, changed Lamorak's position with  23 regard to whether or not it participated in  24 the defense and indemnity of the Christianson  25 case without objection?</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. SCHULZE: Objection to form.  2 I don't think that's the record.  3 <b>A. I would say no. I believe,</b>  4 <b>notwithstanding, whatever -- I mean, what is</b>  5 <b>contained in this letter, my understanding is</b>  6 <b>National Surety still funded the Christianson</b>  7 <b>claim, in accordance with the cost share that</b>  8 <b>the parties agreed to.</b>  9 (Exhibit 5, Bates Nos. NSCLM009826 through  10 -9826, marked for identification.)  11 Q. So what I'm showing you that's  12 been marked as Exhibit 5 is an email  13 apparently from you?  14 <b>A. Yes. That's correct.</b>  15 Q. And what date -- when is it dated?  16 <b>A. It is dated 2/28/2017.</b>  17 Q. And I think we've established  18 that -- well, maybe we haven't. Do you  19 recall when the claim was settled?  20 <b>A. The Ciokajlo claim?</b>  21 Q. Yeah.  22 <b>A. I believe it was settled late</b>  23 <b>March 2017.</b>  24 Q. Okay. So this is about a month  25 before?</p>
<p style="text-align: right;">Page 72</p> <p>1 <b>A. Yeah, approximately.</b>  2 Q. And is there a cost share  3 suggested here?  4 <b>A. There is.</b>  5 Q. Okay. And you suggested it;  6 correct?  7 <b>A. I did.</b>  8 Q. And is Fireman's Fund  9 participating in this cost share?  10 <b>A. They are not listed here.</b>  11 Q. Okay. So why -- and is this the  12 cost share that should have controlled the  13 allocation in the Ciokajlo matter?  14 <b>A. No.</b>  15 Q. And why not?  16 <b>A. I believe Lamorak has taken the</b>  17 <b>position that Fireman's Fund should have</b>  18 <b>contributed per their time on risk.</b>  19 Q. Right. But I think earlier you  20 said that -- strike that.  21 Do you know whether or not  22 Mr. Harris suggested a cost share subsequent  23 to this cost share?  24 <b>A. Am I aware whether he suggested a</b>  25 <b>cost share subsequent to this?</b></p>	<p style="text-align: right;">Page 73</p> <p>1 <b>I believe we ultimately had an</b>  2 <b>understanding in terms of ultimately funding</b>  3 <b>the cost share -- or excuse me -- ultimately</b>  4 <b>funding the Ciokajlo claim and Fireman's did</b>  5 <b>participate in that.</b>  6 Q. And that's a written formal  7 agreement; correct?  8 <b>A. That's correct.</b>  9 Q. And as you sit here today, you're  10 not aware of Mr. Harris sending a subsequent  11 allocation to this?  12 <b>A. Are you asking whether Mr. Harris</b>  13 <b>contradicted what was included in my email</b>  14 <b>here?</b>  15 Q. No. I think earlier you testified  16 that one of the facts that Lamorak bases its  17 waiver claim is on allocation that Mr. Harris  18 did for this claim.  19 <b>A. Correct. Prior to this</b>  20 <b>allocation.</b>  21 Q. Okay. So it was prior?  22 <b>A. To this allocation, correct.</b>  23 Q. Okay. And so my question is: You  24 did a subsequent allocation? You're saying  25 the one that Mr. Harris did controls. Why</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 74..77

<p style="text-align: right;">Page 74</p> <p>1 doesn't this one control?</p> <p>2 <b>A. I believe, as indicated in the</b></p> <p>3 <b>letter -- or excuse me -- the email, that we</b></p> <p>4 <b>disagreed with Fireman's position at the</b></p> <p>5 <b>time.</b></p> <p>6 Q. And that's its position that its</p> <p>7 policies weren't triggered?</p> <p>8 <b>A. I believe they issued a separate</b></p> <p>9 <b>letter in March -- excuse me -- February</b></p> <p>10 <b>17 -- I think it was around February 17th,</b></p> <p>11 <b>with a position that is separate from the</b></p> <p>12 <b>position that they ultimately took in their</b></p> <p>13 <b>March 17th letter.</b></p> <p>14 Q. Okay. And I'm assuming Lamorak</p> <p>15 also disagrees with the position they</p> <p>16 ultimately took in their March 17th letter?</p> <p>17 <b>A. Correct.</b></p> <p>18 (Exhibit 6, Interim Settlement Funding</p> <p>19 Agreement, marked for identification.)</p> <p>20 MR. DUNNE: For the record, this</p> <p>21 is a document entitled, "Interim</p> <p>22 Settlement Funding Agreement."</p> <p>23 BY MR. DUNNE:</p> <p>24 Q. Have you ever seen this document</p> <p>25 before?</p>	<p style="text-align: right;">Page 75</p> <p>1 <b>A. I have.</b></p> <p>2 Q. And can you tell me what this</p> <p>3 document is?</p> <p>4 <b>A. This is an agreement between</b></p> <p>5 <b>National Surety and Lamorak to pay shares to</b></p> <p>6 <b>fund the Ciokajlo claim. Or fund the</b></p> <p>7 <b>Ciokajlo settlement, I should say.</b></p> <p>8 Q. And who signed it on behalf of</p> <p>9 Lamorak?</p> <p>10 <b>A. That appears it was signed by</b></p> <p>11 <b>Robert McCarthy.</b></p> <p>12 Q. And I don't believe -- you said he</p> <p>13 was your direct supervisor?</p> <p>14 <b>A. Not my direct supervisor, no.</b></p> <p>15 Q. So why did Mr. McCarthy sign this</p> <p>16 document, if you know?</p> <p>17 <b>A. I believe we determined he was the</b></p> <p>18 <b>appropriate representative to sign the</b></p> <p>19 <b>document.</b></p> <p>20 Q. Okay. Is he the one that decided</p> <p>21 that you authorize this agreement,</p> <p>22 ultimately?</p> <p>23 <b>A. He's ultimately the one that</b></p> <p>24 <b>signed it, correct.</b></p> <p>25 Q. So looking at the first -- strike</p>
<p style="text-align: right;">Page 76</p> <p>1 that.</p> <p>2 Looking at paragraph number 2,</p> <p>3 "The insurers do not concede liability,</p> <p>4 coverage or the correctness of any coverage</p> <p>5 theory" (as read).</p> <p>6 Do you see that?</p> <p>7 <b>A. I do.</b></p> <p>8 Q. Lamorak agreed that by National</p> <p>9 Surety making a contribution to the Ciokajlo</p> <p>10 settlement, that nobody was conceding</p> <p>11 liability coverage or the correctness of any</p> <p>12 particular coverage theory?</p> <p>13 <b>A. Yeah, by signing that. I mean,</b></p> <p>14 <b>the document says what it says.</b></p> <p>15 Q. That's exactly right. Okay.</p> <p>16 And if you go down to 3.2, it</p> <p>17 says, "No Insurer will argue that any Insurer</p> <p>18 waived any coverage defenses by making</p> <p>19 payments pursuant to this Agreement"?</p> <p>20 <b>A. Yes. That's what the document</b></p> <p>21 <b>says.</b></p> <p>22 Q. So the fact that Allianz</p> <p>23 contributed to the Ciokajlo matter, is, in</p> <p>24 fact, that Lamorak's relying on for purposes</p> <p>25 of its waiver argument?</p>	<p style="text-align: right;">Page 77</p> <p>1 MR. SCHULZE: Objection to form.</p> <p>2 <b>A. Can you say that again?</b></p> <p>3 BY MR. DUNNE:</p> <p>4 Q. Sure. I may have been mistaken.</p> <p>5 But I think one of the factors that you</p> <p>6 pointed to, with regard to the facts</p> <p>7 supporting the waiver claim, was that Allianz</p> <p>8 paid indemnity for Ciokajlo and it paid it</p> <p>9 pursuant to the same cost share as in</p> <p>10 Christianson. Is that a fair statement?</p> <p>11 <b>A. No. I mean, I'm not -- I believe</b></p> <p>12 <b>what I said is they had agreed to a cost</b></p> <p>13 <b>share -- indemnity cost share that they</b></p> <p>14 <b>proposed, which was the same as in</b></p> <p>15 <b>Christianson.</b></p> <p>16 Q. Okay. And you believe that that</p> <p>17 indemnity cost share contradicts this</p> <p>18 agreement?</p> <p>19 <b>A. I mean, the agreement says what it</b></p> <p>20 <b>says. I testified that Allianz and Recaris</b></p> <p>21 <b>proposed a cost share for the Ciokajlo claim.</b></p> <p>22 Q. And we've established it -- and,</p> <p>23 you know, you proposed a subsequent cost</p> <p>24 share?</p> <p>25 MR. SCHULZE: Objection to form.</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 78..81

<p style="text-align: right;">Page 78</p> <p>1 <b>A. I did propose a subsequent cost</b>  2 <b>share once Allianz indicated that they were</b>  3 <b>not going to fund the Ciokajlo settlement.</b>  4 Q. So why do you contend -- why does  5 Lamorak contend the fact that Mr. Harris put  6 in an email a potential cost share, waives  7 Allianz's ability to seek reimbursement for  8 indemnity, when we have this signed and  9 executed agreement, which says all parties  10 are reserving their rights?  11 MR. SCHULZE: Object to the form  12 of the question. Calls for legal  13 conclusions, analysis.  14 You can answer.  15 <b>A. Again, I mean, the document speaks</b>  16 <b>for itself, says what it says. I was called</b>  17 <b>to testify as to certain facts and one of</b>  18 <b>those facts was that certain facts supporting</b>  19 <b>the waiver claim, one of those facts is that</b>  20 <b>Allianz had proposed the cost share --</b>  21 <b>indemnity cost share, was agreeing to pay</b>  22 <b>indemnity on the Ciokajlo claim.</b>  23 Q. Where does it say -- do you have  24 an email from Mr. Harris saying they agreed  25 to pay indemnity?</p>	<p style="text-align: right;">Page 79</p> <p>1 <b>A. I believe they agreed to with that</b>  2 <b>cost share, with the understanding that we</b>  3 <b>were going to pay indemnity on that claim.</b>  4 Q. Okay. Can you find the March  5 37 -- sorry -- the March 17th letter?  6 <b>A. Okay.</b>  7 Q. We've already talked -- this is a  8 reservation of rights letter. Do you  9 recognize it as a reservation of rights  10 letter?  11 <b>A. The March 17th letter?</b>  12 Q. Yeah.  13 <b>A. Correct.</b>  14 Q. Do you see here or anywhere  15 Allianz agrees to pay indemnity?  16 <b>A. Yeah, it's not in here.</b>  17 Q. And, in fact, they say payment of  18 indemnity is questionable?  19 MR. SCHULZE: Object to the form.  20 Do you want to direct him to that  21 language?  22 MR. DUNNE: Sure.  23 BY MR. DUNNE:  24 Q. Turning to page 4, the second  25 paragraph, last sentence. The sentence</p>
<p style="text-align: right;">Page 80</p> <p>1 begins "Moreover."  2 <b>A. Okay.</b>  3 Q. Do you see that language?  4 <b>A. I do.</b>  5 Q. "For the reasons set forth below,  6 we must advise you that the indemnity for the  7 Underlying Lawsuit," referring to the  8 Ciokajlo matter, "is unlikely based on the  9 facts currently known to FFIC"? (as read)  10 <b>A. Yeah. That's what it says.</b>  11 Q. I promised I'd do it on all of  12 these, so we'll see.  13 Is it Lamorak's contention that  14 the affirmative defense of release applies in  15 this case?  16 MR. DUNNE: Objection to form.  17 <b>A. Again, the document and that</b>  18 <b>response was prepared by counsel. I provided</b>  19 <b>counsel with the claims file and facts to</b>  20 <b>support what was written in this document.</b>  21 Q. Okay. So I'm just asking you for  22 what facts does Lamorak contend support a  23 defense of release.  24 <b>A. I would say the same facts as I</b>  25 <b>testified earlier with respect to waiver.</b></p>	<p style="text-align: right;">Page 81</p> <p>1 Q. And your same answer for laches  2 and estoppel?  3 <b>A. I would say that's fair, correct.</b>  4 Q. Okay. So for the affirmative  5 defenses set forth in the fourth affirmative  6 defensive, we discussed all of the facts that  7 Lamorak contends supports those defenses?  8 MR. SCHULZE: Object to the form.  9 I don't think --  10 MR. DUNNE: I mean, I can break  11 them all down.  12 MR. SCHULZE: No. I don't think  13 the question -- for all of the facts. I  14 mean, I don't know that it's fair to  15 have a witness come to a deposition and  16 provide a laundry list of each and every  17 possible fact. I understand you've  18 asked for facts. He's given you  19 facts.  20 BY MR. DUNNE:  21 Q. As you sit here today, are you  22 aware of any other facts that support  23 Lamorak's affirmative defenses, other than  24 those that you stated, of waiver, release,  25 laches or estoppel?</p>



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 82..85

<p style="text-align: right;">Page 82</p> <p>1 <b>A. Yes. I would say Rick Harris's</b> 2 <b>act of conduct in directing the defense of</b> 3 <b>the Ciokajlo claim.</b> 4 Q. There's no official cost share in 5 this case; correct? 6 MR. DUNNE: Objection. Asked and 7 answered. 8 BY MR. DUNNE: 9 Q. I think we've talked about that. 10 There's no formal cost share? 11 <b>A. Correct.</b> 12 Q. Okay. So are you aware of 13 anything that determines who controls defense 14 counsel? 15 MR. SCHULZE: In this matter, in 16 the Ciokajlo case? 17 MR. DUNNE: In the Resinoid 18 matter. 19 <b>A. I'm not sure what you mean by "who</b> 20 <b>controls."</b> 21 BY MR. DUNNE: 22 Q. So with the duty to defend comes 23 the ability to control defense counsel. 24 Wouldn't you agree? 25 MR. SCHULZE: I'm going to object</p>	<p style="text-align: right;">Page 83</p> <p>1 to the form. 2 <b>A. Yeah, I mean, I believe that</b> 3 <b>that's provided for in policy language.</b> 4 Q. Okay. Do you know who appointed 5 defense counsel for Resinoid and specifically 6 Mr. -- first question, do you know who 7 appointed defense counsel for Resinoid? 8 MR. SCHULZE: For all the claims? 9 <b>A particular claim?</b> 10 MR. DUNNE: All the claims. 11 <b>A. Which counsel? I'm not sure who</b> 12 <b>you're referring to.</b> 13 BY MR. DUNNE: 14 Q. We'll go with Ohio counsel. 15 <b>A. I believe that would have been</b> 16 <b>Joey Solomon, my predecessor, recommended</b> 17 <b>Pete Cozza as local counsel for the Ciokajlo</b> 18 <b>claim.</b> 19 Q. And Mr. Cozza is with Resolute? 20 <b>A. No.</b> 21 Q. Who is he with? 22 <b>A. Dickie McCamey, and I don't</b> 23 <b>remember the third name.</b> 24 Q. And who is Dickie McCamey in this 25 scheme of Resinoid defense?</p>
<p style="text-align: right;">Page 84</p> <p>1 <b>A. They were local counsel for the</b> 2 <b>Ciokajlo claim.</b> 3 Q. Dickie McCamey was? 4 <b>A. Correct.</b> 5 Q. I thought you said they 6 recommended local counsel for the Ciokajlo 7 claim. 8 <b>A. I think I said Joey Solomon, my</b> 9 <b>predecessor, recommended Pete Cozza of Dickie</b> 10 <b>McCamey to be local counsel for the Ciokajlo</b> 11 <b>claim.</b> 12 Q. And who did Joey Solomon work for? 13 <b>A. He worked for Resolute.</b> 14 Q. And did Resolute, in fact, hire -- 15 did you say Mr. Cozza? 16 <b>A. Pete Cozza. Pierre Cozza. I</b> 17 <b>believe the carriers agreed to retain</b> 18 <b>Mr. Cozza as local counsel.</b> 19 Q. On Resolute's recommendation? 20 <b>A. Resolute -- yeah, I mean,</b> 21 <b>Resolute recommended, and I believe the other</b> 22 <b>carriers had worked with him and agreed as</b> 23 <b>well.</b> 24 Q. Is Dickie McCamey on the Resolute 25 panel?</p>	<p style="text-align: right;">Page 85</p> <p>1 <b>A. I'm not sure what you mean by "the</b> 2 <b>Resolute panel."</b> 3 Q. Does Resolute hire specific 4 defense firms to defend their asbestos 5 matters involving Resolute insurance? 6 <b>A. In cases, yes, Resolute will</b> 7 <b>retain attorneys to defend the uninsureds for</b> 8 <b>books of business which we act as -- or</b> 9 <b>Resolute acts as an administrator.</b> 10 Q. Is asbestos a book of business? 11 Lamorak asbestos business a book of business 12 that you hire defense lawyers for? 13 <b>A. Yeah. Resolute will retain</b> 14 <b>defense counsel on behalf of insureds who</b> 15 <b>Lamorak insured.</b> 16 Q. Okay. And how do you determine -- 17 how does Resolute determine who it hires for 18 defense counsel in any given jurisdiction? 19 <b>A. Are you asking me generally how we</b> 20 <b>determine defense counsel?</b> 21 Q. Yeah. 22 <b>A. In my experience, I would -- if I</b> 23 <b>get a new claim, I would request -- excuse</b> 24 <b>me. Let me restate that.</b> 25 <b>I would inform our team, which we</b></p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 86..89

<p style="text-align: right;">Page 86</p> <p>1 have a team, which is called the asbestos 2 strategic units, I would inform them that we 3 have a claim located in a certain 4 jurisdiction. They would then provide me 5 with an attorney or list of attorneys or 6 several names which they would recommend, and 7 then, as practice, I would call them. They 8 would run a conflicts check. And I would 9 also -- you know, again, it's dependent on 10 whether there are other carriers. I would 11 always, as a practice, run by who we 12 recommend by other carriers. 13 Q. And is Dick &amp; *McCamion, the list 14 provided by your strategic team for Ohio? 15 A. I'm not aware of any list. 16 Q. Sorry. I thought you said you 17 just would be provided a list by the 18 strategic teams of lawyers you could contact. 19 I apology if I misheard you. 20 A. I believe I said: In any given 21 claim, our strategic unit will provide me 22 several different names in that jurisdiction, 23 correct. 24 Q. Is *Dick &amp; McCamey a firm that 25 Resolute uses to defend asbestos cases in</p>	<p style="text-align: right;">Page 87</p> <p>1 Ohio? 2 A. Among other firms I'm aware of, 3 correct. 4 Q. I believe you mentioned that there 5 was a national coordinating counsel on that 6 matter? 7 A. That's correct. Ed Matushek. 8 Q. And do you know what firm he's 9 with? 10 A. I believe the firm is called 11 Matushek and Nilles. 12 Q. Was Mr. Matushek at another firm 13 before Matushek and Nilles, if you know? 14 A. No. I believe the firm was called 15 Matushek Nilles &amp; Sinars at one point. 16 Q. And he's national counsel for 17 Resinoid? 18 A. Correct. 19 Q. What does that mean? 20 A. That means he oversees, 21 nationally, all claims filed against 22 Resinoid, asbestos claims. 23 Q. Do you know if he's national 24 counsel for any other Resinoid's insureds? 25 A. I'm not aware of. He may be.</p>
<p style="text-align: right;">Page 88</p> <p>1 Q. Do you know how he became national 2 counsel for Resinoid? 3 A. What do you mean do I know how he 4 became? 5 Q. How he got the national counsel 6 gig for the Resinoid account. 7 A. He was hired to be. 8 Q. Okay. By who? 9 A. I believe it was Chris Dardis. 10 Q. Who is Chris Dardis? 11 A. He works for Resolute. 12 Q. Do you recall when that was? 13 A. It probably would have been in and 14 around 2004. 15 Q. And in 2017 -- sorry. Between 16 approximately 2004 and 2017, Mr. Matushek was 17 coordinating counsel for Resinoid, national 18 coordinating counsel? 19 A. I believe, yes, he was for that 20 entire period. 21 Q. And he was hired by Resolute in 22 2004, probably subject to the other carriers' 23 authority? 24 A. Correct. 25 Q. And it's your contention that</p>	<p style="text-align: right;">Page 89</p> <p>1 Mr. Harris could control Mr. Matushek in 2 2017? 3 MR. SCHULZE: Objection to form. 4 A. I don't believe that's what I 5 said. 6 Q. Okay. Well, I think you said that 7 one of the bases, one of the facts 8 demonstrating waiver was the fact that 9 Mr. Harris controlled Mr. Matushek. Is that 10 an incorrect statement? 11 A. No, that's not correct. 12 Q. Okay. Sorry. 13 Can you tell me what about 14 Mr. Harris's conduct, vis-a-vis Mr. Matushek, 15 causes you to believe it supports a waiver 16 argument? 17 A. He was substantially directing the 18 defense in the Ciokajlo frame. 19 Q. When you say "substantially 20 directing the defense," what does that mean? 21 A. He would encourage Mr. Matushek to 22 take certain actions. I believe he was the 23 more vocal of the carriers in how the 24 Ciokajlo claim was defended. 25 Q. And can you give me something</p>



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 90..93

<p style="text-align: right;">Page 90</p> <p>1 specific where Mr. Harris directed 2 Mr. Matushek to do something? 3 <b>A. I mean, something specific, as I</b> 4 <b>sit here today, I believe he directed</b> 5 <b>Mr. Matushek to obtain bankruptcy reports.</b> 6 Q. Thank you. Bankruptcy reports on 7 who? The Plaintiff? 8 <b>A. No. Bankruptcy report meaning</b> 9 <b>bankrupt entities where the Plaintiff may</b> 10 <b>have made the claims against certain trusts,</b> 11 <b>bankruptcy trusts. Reports I should say.</b> 12 Q. And what impact on the defense of 13 Resinoid would that have? 14 <b>A. That would allow the carriers to</b> 15 <b>assess potential set-offs.</b> 16 Q. And that goes to the amount of 17 potential liability; correct? 18 <b>A. Ultimate liability, correct.</b> 19 Q. And to assess the potential 20 exposure of a claim, you need to determine 21 what the ultimate liability is; isn't that 22 true? 23 <b>A. Say that again.</b> 24 Q. To assess the potential ultimate 25 exposure -- sorry. To assess the exposure, a</p>	<p style="text-align: right;">Page 91</p> <p>1 claim they present to an insurer, you need to 2 understand what the ultimate liability is 3 against that insured; isn't that true? 4 <b>A. Sure.</b> 5 MR. SCHULZE: Rory, when we get a 6 chance, we've been going for a while. 7 Can we take a break? 8 MR. DUNNE: I'm pretty close to 9 being done. You can take a break, if 10 you want. 11 (Recess taken at 4:10 p.m. to 4:19 p.m.) 12 MR. DUNNE: Back on the record. 13 BY MR. DUNNE: 14 Q. Now for the question you've all 15 been waiting for. 16 What is Lamorak's position on 17 which state's law applies to the National 18 Surety policies? 19 <b>A. What state law applies to the</b> 20 <b>National Surety policies?</b> 21 Q. Correct. 22 <b>A. My understanding is the National</b> 23 <b>Surety policies were issued to Resinoid</b> 24 <b>Engineering in Ohio.</b> 25 Q. When you say "issued," what do you</p>
<p style="text-align: right;">Page 92</p> <p>1 mean? 2 <b>A. I believe it says the Resinoid</b> 3 <b>address, mailing address on the face of the</b> 4 <b>National Surety policies, Resinoid</b> 5 <b>Engineering, to an address located in Ohio.</b> 6 Q. And on that basis, you contend 7 Ohio law applies to the policy? 8 MR. SCHULZE: Objection to the 9 question, but go ahead. 10 <b>A. That and other factors.</b> 11 BY MR. DUNNE: 12 Q. What other factors? 13 <b>A. The Ciokajlo claim was filed in</b> 14 <b>Ohio. Mr. Ciokajlo was -- or is an Ohio</b> 15 <b>insured. The allegations with respect to the</b> 16 <b>asbestos exposure took place in Ohio at</b> 17 <b>Kirkwood's plant, which is also located in</b> 18 <b>Ohio.</b> 19 Q. Does Lamorak have any evidence 20 that Resinoid actually received the policies 21 in Ohio? National Surety's policy, sorry. 22 <b>A. The National Surety's policy?</b> 23 Q. Yes. 24 <b>A. All I know is on the mailing</b> 25 <b>address for Resinoid indicates Ohio.</b></p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Have you ever seen any of National 2 Surety policies produced by Resinoid? 3 <b>A. I'm not sure what you mean by</b> 4 <b>that.</b> 5 Q. Has defense counsel ever provided 6 with you the National Surety policies 7 provided to him by Resinoid? 8 MR. SCHULZE: I'm going to object 9 to the extent that that calls for any 10 information you obtained directly from 11 counsel or any attorney-client 12 communications, but otherwise you can 13 answer. 14 MR. DUNNE: When you say 15 "counsel," you mean you? Not defense 16 counsel. 17 MR. SCHULZE: Did I say defense 18 counsel? I didn't mean to -- 19 MR. DUNNE: No, you didn't. But 20 my question was defense counsel. 21 MR. SCHULZE: Okay. I thought you 22 meant -- then I misunderstood the 23 question. So anyway, objection to form. 24 I thought you meant -- coverage counsel 25 in this case.</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 94..97

<p style="text-align: right;">Page 94</p> <p>1 MR. DUNNE: I'll rephrase. 2 BY MR. DUNNE: 3 Q. Have you ever been provided by 4 Mr. Matushek or local counsel with National 5 Surety's policy provided to them by Resinoid? 6 <b>A. I don't believe so.</b> 7 Q. So if Resinoid National Surety -- 8 strike that. 9 You said that Mr. -- I think you 10 said that -- did you say -- strike that. 11 Who did you say is an Ohio 12 insured? Or did you say one of the factors 13 was somebody was an Ohio insured? 14 <b>A. I don't believe I said that. No.</b> 15 Q. Sorry. If you can restate. And I 16 apologize. 17 I've got the first factor -- fact 18 as to why Ohio law applies, and that is, the 19 policy was issued to an address, at least you 20 believe, to an address in Ohio; correct? 21 <b>A. Correct.</b> 22 Q. What other factors? 23 <b>A. The Plaintiff, Mr. Ciokajlo, is an</b> 24 <b>Ohio resident. I believe the exposure took</b> 25 <b>place at Kirkwood Industries, I believe it</b></p>	<p style="text-align: right;">Page 95</p> <p>1 <b>is, which is located in Ohio. The Complaint</b> 2 <b>was filed in Ohio. And I believe -- you</b> 3 <b>know, we still are, in fact, discovering this</b> 4 <b>case. So I believe we still are, you know,</b> 5 <b>reviewing all the documents and analyzing all</b> 6 <b>the facts. So, you know, those are the facts</b> 7 <b>that I am testifying as to today.</b> 8 Q. And did Lamorak consider the fact 9 that the National Surety policies were issued 10 to a broker in Chicago? 11 MR. DUNNE: Objection. Objection. 12 Foundation. 13 <b>A. What do you mean when say, "Did</b> 14 <b>Lamorak consider that?"</b> 15 Q. Does that plan, during your 16 consideration of whether Ohio law applies? 17 MR. SCHULZE: I'm going to object 18 to the extent that that's seeking legal 19 analysis. 20 MR. DUNNE: Right. 21 <b>A. I mean, as the question was, what</b> 22 <b>were the factors in Lamorak's determination</b> 23 <b>that Ohio law applies, I testified that,</b> 24 <b>again, Plaintiff was -- is an Ohio insurer --</b> 25 <b>or Ohio resident. The Complaint was filed in</b></p>
<p style="text-align: right;">Page 96</p> <p>1 <b>Ohio. Kirkwood Industries is located in</b> 2 <b>Ohio, where the exposure took place, and the</b> 3 <b>policy, the National Surety policies were</b> 4 <b>issued to Resinoid Engineering in Ohio.</b> 5 Q. Does it impact Lamorak's 6 contention that the policies -- the National 7 Surety policies were issued to a broker in 8 Illinois? 9 MR. SCHULZE. Objection to form. 10 <b>A. I don't believe Lamorak has taken</b> 11 <b>a position on that.</b> 12 Q. And is it important to Lamorak 13 where the insured is incorporated, for the 14 purposes of choice of law? 15 MR. SCHULZE: I'm going to object 16 again to the extent this is calling for 17 Lamorak's legal analysis. 18 <b>A. And, again, I mean, the question</b> 19 <b>was with respect to the Ohio -- application</b> 20 <b>of Ohio law that, is what I testified to.</b> 21 BY MR. DUNNE: 22 Q. So Lamorak didn't consider -- 23 doesn't consider a factor for that analysis, 24 the fact that the policy -- National Surety 25 policies were issued to a broker in Chicago.</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. SCHULZE: Same objection as to 2 Lamorak's legal analysis as to the 3 choice of law factors. 4 <b>A. Again, I'm testifying as to the</b> 5 <b>facts. The applicability of law as to the</b> 6 <b>policies, that's something that's up to</b> 7 <b>counsel's determination.</b> 8 BY MR. DUNNE: 9 Q. Okay. So Lamorak doesn't consider 10 the fact that the policies were issued to a 11 broker in Chicago important for the choice of 12 law -- its choice of you law contention? 13 MR. SCHULZE: Objection. 14 Foundation. And the same objection for 15 seeking Lamorak's legal analysis. 16 MR. DUNNE: Sure. 17 BY MR. DUNNE: 18 Q. It's not something -- it's not 19 one of the facts Lamorak is considering right 20 now. Is that a fair statement? 21 MR. SCHULZE: Same objection. 22 Q. One way or another, you just 23 haven't considered it? 24 <b>A. That is not a factor in Lamorak's</b> 25 <b>assessments -- or the factual assessments</b></p>

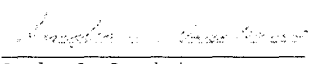
NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 98..101

<p style="text-align: right;">Page 98</p> <p>1 that go into Lamorak's determination of Ohio 2 law. 3 Q. And same answer for the fact that, 4 in 1994 through 2000, Resinoid was an 5 Illinois corporation with its corporate and 6 registered office in Skokie, Illinois? 7 MR. SCHULZE: Objection. Form. 8 Foundation. And the same prior 9 objection with respect to question 10 seeking Lamorak's legal analysis of the 11 choice of law issue. 12 Go ahead. You can answer, if you 13 can. 14 A. Again, I was asked to testify as 15 to what facts support Lamorak's contention of 16 Ohio -- the application of how law, which, 17 again, were -- we have a Plaintiff, resident 18 of Ohio, a Complaint was filed in Ohio, 19 Kirkwood Industries was located in Ohio, and 20 the policies were issued to Resinoid in Ohio. 21 BY MR. DUNNE: 22 Q. Well, I mean, we've established 23 that Lamorak believes they were sent to an 24 address that's on the policies, in Ohio? 25 A. I mean the policy says what it</p>	<p style="text-align: right;">Page 99</p> <p>1 says. Correct. 2 Q. So I'm going to show you just -- 3 let me ask you this. Do you remember what 4 the address on the National Surety policies 5 is? 6 A. Do I specifically recall? No. 7 Q. So I'm going to show you what's 8 previously been marked Harris 19, which I'll 9 tell you, and your counsel can tell 10 otherwise, is the National Surety policy from 11 '99 for 2000, August 1 inception date. 12 Do you see that the address on 13 that document? 14 A. Which address? 15 Q. The Resinoid address. 16 A. Yeah. I see the address. 17 Q. And I'm going show you what's been 18 marked as Harris 20, same address. 19 A. Which address? The address at the 20 top? 21 Q. Yes, the Resinoid address. It was 22 sent to -- 23 A. Resinoid Engineering P.O. Box 24 2264, Newark, Ohio. 25 Q. Right. Same address?</p>
<p style="text-align: right;">Page 100</p> <p>1 A. Yes. 2 Q. Okay. The letter was sent in May; 3 right? 4 A. Fireman's Funds letter? 5 Q. Yeah. 6 A. Yeah, that's correct. 7 Q. That's before the effective date 8 of that policy; correct? 9 A. The inception date on this policy 10 is 8/1/99 So yes, the letter would have been 11 before this policy. 12 Q. Okay. Now I'll direct to you the 13 last page of the letter. Okay? And it 14 says -- shows that that letter sent to that 15 address in May of '99 was returned as an 16 undeliverable? 17 MR. SCHULZE: Objection to form 18 and foundation. 19 A. I don't see that it was returned 20 as undeliver -- 21 Q. Right there. 22 A. Oh. Okay. Yeah, I mean, it says 23 forwarding time, some shortened 24 abbreviations. Yeah, there's a stamp there. 25 Q. And it shows a Hebron address not</p>	<p style="text-align: right;">Page 101</p> <p>1 a Newark address? 2 A. Correct. Hebron, Ohio. 3 MR. DUNNE: Okay. All right. 4 That's all I have. 5 THE REPORTER: This is also 6 confidential? 7 MR. DUNNE: Yes. 8 MR. SCHULZE: Oh, Absolutely. 9 THE REPORTER: Pursuant to the 10 protective order? 11 MR. SCHULZE: Pursuant to the 12 protective. We'll reserve. 13 Confidential pursuant to protective 14 order. Parties agreeing on 15 stipulations. 16 (Deposition concluded at 4:31 p.m.) 17 18 19 20 21 22 23 24 25</p>

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Pages 102..104

Page 102	Page 103
<p>1 COMMONWEALTH OF MASSACHUSETTS 2 SUFFOLK, SS. 3 4 I, Sandra A. Deschaine, Registered 5 Professional Reporter and Notary Public 6 within and for the Commonwealth of 7 Massachusetts at large, do hereby certify 8 that the deposition of James M. Gardner, in 9 the matter of National Surety Corporation, 10 vs. Lamorak Insurance Company, at the offices 11 Hinshaw &amp; Culbertson, LLP, 28 State Street, 12 Boston, Massachusetts, on May 23, 2018, taken 13 and transcribed by me; that the witness 14 provided satisfactory evidence of 15 identification as prescribed by Executive 16 Order 455 (03-13) issued by the Governor of 17 the Commonwealth of Massachusetts; that the 18 transcript produced by me is a true record of 19 the proceedings to the best of my ability; 20 that the witness is reading and signing; that 21 I am neither counsel for, related to, nor 22 employed by any of the parties to the action 23 in which this deposition was taken, and 24 further that I am not a relative or employee 25 of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action, on this 12th day of June 2018.</p> <p> Sandra A. Deschaine Registered Professional Reporter</p> <p>My Commission Expires: July 5, 2024</p>	<p>1 SIGNATURE PAGE 2 NATIONAL SURETY CORPORATION VS. LAMORAK 3 INSURANCE COMPANY 4 JAMES M. GARDNER - MAY 23, 2018 5 6 I, the undersigned, declare under penalty 7 of perjury that I have read the foregoing 8 transcript, and I have made any corrections, 9 additions or deletions that I was desirous 10 of making; that the foregoing is a true and 11 correct transcript of my testimony contained 12 therein. 13 14 Executed this _____ day of 15 _____, 16 17 at _____, _____. 18 (CITY) (STATE) 19 20 ----- 21 JAMES M. GARDNER 22 23 24 25</p>
<p>1 ERRATA SHEET 2 NATIONAL SURETY CORPORATION VS. LAMORAK 3 INSURANCE COMPANY 4 JAMES M. GARDNER - MAY 23, 2018 5 Page  Line  Change/Correction 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25</p>	

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NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: after..authority

<b>after</b> 23:15 65:18	<b>answer</b> 5:19 6:2,8 19:16 36:4 37:3,7, 10,24 38:13,21 52:17 57:10 58:16 59:23 78:14 81:1 93:13 98:3,12	23 14:3 15:4,5 17:20 18:13,15 27:9,10 28:20 32:10,17 39:10,24 40:14,24 41:11 42:16 43:13 44:20 47:3,23 48:25 49:7,22 51:9,11 58:13 59:20 60:4 63:6,11,24 64:1,17 65:12 67:8 68:5 70:4,13 72:10 73:12 78:10 81:21 82:12 85:19 86:10 95:3,4,6
<b>again</b> 9:21 16:9 46:17 48:6 49:23 50:4 51:3 57:2 62:16 77:2 78:15 80:17 86:9 90:23 95:24 96:16,18 97:4 98:14,17	<b>answered</b> 82:7	<b>areas</b> 9:17
<b>against</b> 9:17 37:21 87:21 90:10 91:3	<b>answering</b> 8:21	<b>argue</b> 76:17
<b>ago</b> 7:5 56:5	<b>answers</b> 5:18 36:19	<b>argument</b> 58:12 59:20 76:25 89:16
<b>agree</b> 55:7 62:9 63:6,16 65:15 66:22 70:7 82:24	<b>any</b> 5:23 15:18 16:13,15,16,19,22 17:16,23 19:3,18 20:24 21:6 22:24 24:1,10 25:8,23 26:17 27:23 28:16,24 30:2,9,15 31:12 32:21 33:5,14,18 35:12,17 36:18,23 37:9 39:11 41:21 43:11,15 47:16 48:7,20 49:1,8,12 50:10,17,18 51:6,9,10,11,12 52:6,10, 11,18,19 58:6 59:12 64:2 76:4,11,17, 18 81:22 85:18 86:15,20 87:24 92:19 93:1,9,11	<b>around</b> 12:17 24:4 31:5 65:14 74:10 88:14
<b>agreed</b> 56:3,9 71:8 76:8 77:12 78:24 79:1 84:17,22	<b>anybody</b> 8:5 9:20 18:21 19:9 21:3,7 22:1,17 25:19 60:21	<b>asbestos</b> 9:12,13 11:11,14 18:8 29:12 31:18 39:4,8,10 40:15,20 41:15, 18 47:21 49:13 50:3,8,20 51:7,13 52:7,13 57:19 58:24 64:3 85:4,10,11 86:1,25 87:22 92:16
<b>agreed-upon</b> 33:12	<b>anything</b> 12:20 18:12 35:17,18 39:16 82:13	<b>asbestos-containing</b> 46:7 48:22 49:10 67:13
<b>agreeing</b> 78:21 101:14	<b>anyway</b> 93:23	<b>ask</b> 6:2,4 36:7 38:2 44:4,9 46:5 48:14, 18 51:14 99:3
<b>agreement</b> 44:11,15 65:9 73:7 74:19, 22 75:4,21 76:19 77:18,19 78:9	<b>anywhere</b> 79:14	<b>asked</b> 32:15 81:18 82:6 98:14
<b>agreements</b> 32:11,13	<b>apologize</b> 24:6 65:23 94:16	<b>asking</b> 6:16 26:17 27:9,10 28:20 42:19 45:14,18 47:3,23 48:25 49:7 51:9,11 60:4,21,25 61:17 64:1,17 70:13 73:12 80:21 85:19
<b>agrees</b> 79:15	<b>apology</b> 86:19	<b>aspect</b> 29:17
<b>ahead</b> 8:25 37:4 60:9 92:9 98:12	<b>apparently</b> 71:13	<b>assess</b> 14:3 18:9 90:15,19,24,25
<b>allegation</b> 38:21 48:15	<b>appears</b> 75:10	<b>assessment</b> 21:19,21,24
<b>allegations</b> 36:19,24 62:14,18 67:5 92:15	<b>applicability</b> 97:5	<b>assessments</b> 29:20 97:25
<b>Allianz</b> 23:7 57:17 58:21 68:6 76:22 77:7,20 78:2,20 79:15	<b>applicable</b> 21:4,8,11,12,16 23:8	<b>assigned</b> 12:16 15:22
<b>Allianz's</b> 58:3 59:9 78:7	<b>application</b> 20:17 96:19 98:16	<b>assume</b> 6:7 48:18 49:25 50:6
<b>allocation</b> 30:22 31:8 72:13 73:11,17, 20,22,24	<b>applied</b> 22:13 24:1 26:2 47:15 48:7	<b>assuming</b> 74:14
<b>allow</b> 90:14	<b>applies</b> 27:5,8,13 28:6 80:14 91:17, 19 92:7 94:18 95:16,23	<b>attached</b> 38:4
<b>already</b> 16:23 79:7	<b>apply</b> 14:13 21:19	<b>attention</b> 37:22
<b>also</b> 8:3 9:14 20:9 43:16 74:15 86:9 92:17 101:5	<b>applying</b> 29:3 47:20 48:4	<b>attorney</b> 86:5
<b>although</b> 11:21	<b>appointed</b> 83:4,7	<b>attorney-client</b> 26:18 93:11
<b>always</b> 86:11	<b>approaches</b> 40:15 41:21 43:12	<b>attorneys</b> 85:7 86:5
<b>Amended</b> 36:5	<b>appropriate</b> 75:18	<b>audible</b> 5:18
<b>among</b> 8:19 87:2	<b>approximately</b> 13:7 34:17 72:1 88:16	<b>audibly</b> 5:19
<b>amount</b> 90:16	<b>April</b> 34:5,10	<b>August</b> 99:11
<b>analysis</b> 46:4 78:13 95:19 96:17,23 97:2,15 98:10	<b>are</b> 6:9,15 7:22 9:22 10:18 12:5 13:17,	<b>authority</b> 9:16 10:5,6,16,24 11:1,5, 18,20,25 12:2 61:5 88:23
<b>analyzed</b> 20:15		
<b>analyzing</b> 95:5		
<b>and/or</b> 17:12,13		
<b>another</b> 33:9 57:22 59:3 66:13 87:12 97:22		

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: authorize..Christian

<b>authorize</b> 75:21	<b>being</b> 7:6,12 9:22 23:2,5 91:9	<b>called</b> 31:13 39:16 40:25 41:24 43:17, 19 57:14 58:18 78:16 86:1 87:10,14
<b>Automated</b> 34:18	<b>belief</b> 23:25	<b>calling</b> 96:16
<b>available</b> 7:18	<b>believe</b> 10:15,25 11:7,20 13:3,9 14:19,24 17:22 19:13,15 20:8,9,13 21:17 22:12 23:6 24:4,15 25:2,25 26:6,7 27:16 29:9,15,19,20 30:1,4,5, 18 31:5,14 33:8 35:10 40:25 41:23 42:2 43:13,18,22 46:1 47:18 51:22,23 52:2,14 57:23 58:4 59:5,11 61:8 65:13,16 66:16 70:8 71:3,22 72:16 73:1 74:2,8 75:12,17 77:11,16 79:1 83:2,15 84:17,21 86:20 87:4,10,14 88:9,19 89:4,15,22 90:4 92:2 94:6,14, 20,24,25 95:2,4 96:10	<b>calls</b> 78:12 93:9
<b>aware</b> 17:20 45:19 49:1,8,12,13 50:10,16 51:5 52:10,18,19 68:6,10 72:24 73:10 81:22 82:12 86:15 87:2, 25		<b>came</b> 19:14
<b>away</b> 54:10		<b>can</b> 7:8 8:16,25 9:1 12:3 14:16 20:12 22:6 24:7 33:9,23 35:2 37:3,22 38:2 39:19 40:21,23 41:2 46:16 49:2 50:4, 22,25 53:15,16 55:5,7,18 58:15 63:6 65:25 66:4 68:23 75:2 77:2 78:14 79:4 81:10 89:13,25 91:7,9 93:12 94:15 98:12,13 99:9
<hr/> <b>B</b> <hr/>		
<b>b2</b> 44:21	<b>believes</b> 27:7 54:11 98:23	<b>can't</b> 5:21 42:7 43:14 63:12 70:17
<b>back</b> 23:2 33:25 49:20 50:14,25 52:4 53:16 58:9,16 59:16 60:14 66:4,5 91:12	<b>below</b> 80:5	<b>capacity</b> 6:10,11 8:14
<b>background</b> 32:16 35:3	<b>between</b> 8:17 9:5 14:21 15:5,10 16:8 17:17 23:2 43:8 48:22 49:11 51:8 52:7,13 75:4 88:15	<b>Carol</b> 8:7,9,10,12
<b>bankrupt</b> 90:9	<b>big</b> 49:23	<b>carrier</b> 30:8 32:9 33:12 41:9 57:18 58:23
<b>bankruptcy</b> 90:5,6,8,11	<b>bit</b> 33:23 42:5	<b>carrier's</b> 30:24
<b>barred</b> 54:5	<b>Bob</b> 11:17,24	<b>carriers</b> 30:17 31:9 41:9 65:15 84:17, 22 86:10,12 89:23 90:14
<b>base</b> 62:10	<b>bodily</b> 44:22 45:2,21 46:6,13,19 47:1, 4,9,11 48:19 58:11 59:18 63:23,25 64:5 69:7,13 70:5	<b>carriers'</b> 88:22
<b>based</b> 20:18 21:22 30:24 39:24 46:11 47:24 54:16 62:14,18 80:8	<b>body</b> 45:1,8	<b>case</b> 6:18 10:9,11 12:11,15 17:21 22:14 29:25 32:22,25 40:1 43:20,21, 23 54:14 60:16 61:11 67:8,17 70:17, 25 80:15 82:5,16 93:25 95:4
<b>bases</b> 66:20 73:16 89:7	<b>book</b> 85:10,11	<b>cases</b> 31:19 85:6 86:25
<b>basically</b> 29:1	<b>books</b> 85:8	<b>cause</b> 69:15
<b>basis</b> 21:23 27:11 40:9 57:15 58:19 66:23 92:6	<b>borne</b> 32:9	<b>causes</b> 89:15
<b>Bates</b> 44:1,9 68:12,22 71:9	<b>both</b> 6:9 25:5 55:7	<b>certain</b> 9:12,14,15 14:12 54:25 78:17, 18 86:3 89:22 90:10
<b>became</b> 88:1,4	<b>Box</b> 99:23	<b>certainly</b> 26:22
<b>because</b> 6:6 55:10 69:7,13	<b>break</b> 5:24,25 6:3 38:7 66:1 81:10 91:7,9	<b>chance</b> 38:19,20 91:6
<b>become</b> 12:14	<b>briefed</b> 18:24	<b>change</b> 59:23 67:15
<b>been</b> 5:2,13 6:25 17:23,25 18:1,5 20:1 23:5,12 24:15 25:3,4 30:1 34:4 35:10 57:14 58:18 61:9 63:1 70:3 71:12 77:4 83:15 88:13 91:6,15 94:3 99:8,17 100:10	<b>briefly</b> 12:3 18:23 33:23 35:2 36:7 68:23	<b>changed</b> 70:22
<b>before</b> 5:13 7:3 15:19 25:16,17 36:9, 11,15 43:21,22 51:21 68:16,18 71:25 74:25 87:13 100:7,11	<b>broker</b> 27:21 95:10 96:7,25 97:11	<b>characterization</b> 39:6
<b>begin</b> 61:23	<b>Bud</b> 19:2	<b>check</b> 86:8
<b>beginning</b> 55:20 69:4	<b>Budlong</b> 10:23 18:25	<b>Chicago</b> 95:10 96:25 97:11
<b>begins</b> 80:1	<b>business</b> 34:18 85:8,10,11	<b>choice</b> 24:11 25:11,20 26:14 27:2,4 28:15 96:14 97:3,11,12 98:11
<b>behalf</b> 8:21 9:8,11 38:24 57:17 58:22 75:8 85:14	<hr/> <b>C</b> <hr/>	
	<b>call</b> 32:24 37:22 86:7	<b>Chris</b> 11:3,16,17 88:9,10
		<b>Christian</b> 66:11 68:21 70:22

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: Christianson..coverage

<b>Christianson</b> 66:10,11,15 67:14,22 68:9,11 70:24 71:6 77:10,15	<b>complaint</b> 19:16,17 36:5,25 37:20 48:12 62:15,19 95:1,25 98:18	<b>control</b> 74:1 82:23 89:1
<b>Ciakajlo</b> 77:21	<b>complete</b> 67:22	<b>controlled</b> 72:12 89:9
<b>Ciokajlo</b> 10:19,22 11:13,23 12:11,15, 20 13:4 21:13 22:1,3,23 24:13,23 29:16,17 30:10,12 33:11 37:18 48:21 49:5,9 50:11,18 51:5 52:5 53:13,22 54:14 55:9,16 56:10 57:24 58:4,6,10 59:6,10,13,17 62:23 65:7,11 71:20 72:13 73:4 75:6,7 76:9,23 77:8 78:3, 22 80:8 82:3,16 83:17 84:2,6,10 89:18,24 92:13,14 94:23	<b>concede</b> 76:3	<b>controls</b> 73:25 82:13,20
<b>Ciokajlo's</b> 51:16	<b>conceding</b> 76:10	<b>conversation</b> 23:20 26:9
<b>Ciokajlo-resinoid</b> 10:9 16:1	<b>concept</b> 39:16 53:5	<b>conversations</b> 21:6 23:22 24:14 25:24
<b>circumstances</b> 67:11	<b>concerning</b> 17:16 18:18 20:12 21:3,8 22:25 24:12 51:16	<b>coordinating</b> 29:11 87:5 88:17,18
<b>claim</b> 11:8 12:25 13:4 20:8,11 21:2 22:18,20,23 23:1 28:16,20 29:16,18, 21,24 30:7,10,12 33:11,17 37:18 39:8, 25 40:1,5,10 47:21,24 48:8 49:5 54:23 56:25 57:22,25 58:4,10 59:3,6,10,17 61:24 62:1,2,7,11 63:19 64:2,3 65:7, 12 66:10,11,14,15,22 67:16 68:2,9,11 70:11 71:7,19,20 73:4,17,18 75:6 77:7,21 78:19,22 79:3 82:3 83:9,18 84:2,7,11 85:23 86:3,21 89:24 90:20 91:1 92:13	<b>concluded</b> 101:16	<b>copy</b> 65:24
<b>claim-by-claim</b> 66:20,23	<b>conclusions</b> 78:13	<b>core</b> 18:15
<b>claims</b> 9:10,12,13,14,15,17,21 11:11 12:8 13:18,21,25 14:1,3,5,13 18:3,8, 10,13 19:14,21,22,24 20:15,18 23:6, 10 39:10 40:16,20 47:16 54:5 57:19 58:24 61:10,16 80:19 83:8,10 87:21, 22 90:10	<b>conclusively</b> 62:24	<b>corporate</b> 6:10 98:5
<b>classes</b> 35:21	<b>condition</b> 50:2,7,19 51:7	<b>corporation</b> 98:5
<b>Clayton</b> 10:23 18:24	<b>conditions</b> 52:6,12	<b>correct</b> 8:11 10:17 11:15 13:6,19,22 15:24 16:2,6 17:5,19 18:11 19:8 20:3 22:11,15 23:18 24:19 27:22,24 28:7 29:4,7 31:11 34:21,24 40:6,12 47:6 55:14,17 56:12,13,19 57:8,11 60:17, 20 61:19 62:8,12,20,21 63:9,13,15 64:25 65:2,10 66:12 67:6,8,9 71:14 72:6 73:7,8,19,22 74:17 75:24 79:13 81:3 82:5,11 84:4 86:23 87:3,7,18 88:24 89:11 90:17,18 91:21 94:20,21 99:1 100:6,8 101:2
<b>clear</b> 6:5,6,15 27:10 42:15	<b>conduct</b> 82:2 89:14	<b>correctly</b> 10:25 11:7 20:16
<b>client's</b> 40:11	<b>confidential</b> 55:25 56:1 101:6,13	<b>correctness</b> 76:4,11
<b>close</b> 91:8	<b>confirm</b> 22:1	<b>correspondence</b> 20:10,20,25 29:6
<b>college</b> 35:5	<b>confirmed</b> 23:24 60:15	<b>corresponding</b> 21:2
<b>come</b> 32:1 81:15	<b>conflicts</b> 86:8	<b>cost</b> 30:8,11,16,23 31:3,4,6,8,13,21 32:1,6,17,24,25 33:10 57:19,24,25 58:24 59:5,7 64:24 65:1,3,4,6,8,12,15, 19,20,22 66:9 71:7 72:2,9,12,22,23,25 73:3 77:9,12,13,17,21,23 78:1,6,20,21 79:2 82:4,10
<b>comes</b> 45:8,12 66:5 82:22	<b>confused</b> 15:17	<b>could</b> 5:9 20:22 43:7 46:3 47:10,12 52:21 59:25 64:13,17,18,21 86:18 89:1
<b>communications</b> 26:18 93:12	<b>Congratulations</b> 36:1	<b>counsel</b> 5:15 8:2,6,11,13,14 14:4 19:13 29:12 37:5,13 54:22 80:18,19 82:14,23 83:5,7,11,14,17 84:1,6,10,18 85:14,18,20 87:5,16,24 88:2,5,17,18 93:5,11,15,16,18,20,24 94:4 99:9
<b>companies</b> 16:14	<b>consider</b> 64:11 95:8,14 96:22,23 97:9	<b>counsel's</b> 97:7
<b>company</b> 6:22 34:18 37:21	<b>consideration</b> 95:16	<b>course</b> 35:18
<b>Company's</b> 36:3 69:5	<b>considered</b> 48:4 97:23	<b>coverage</b> 14:2,6,11 15:12,13,23,25 16:8,16,19 18:9,10 21:12 22:14,23 23:17 24:2 25:11,17 38:25 39:13 40:3, 11 41:6 43:8 46:4 61:23 76:4,11,12,18
	<b>considering</b> 97:19	
	<b>consultation</b> 14:4	
	<b>contact</b> 9:20 86:18	
	<b>contained</b> 48:16 71:5	
	<b>contend</b> 78:4,5 80:22 92:6	
	<b>contends</b> 56:25 81:7	
	<b>contention</b> 53:10,19 54:18,19 56:21 64:23 66:9 80:13 88:25 96:6 97:12 98:15	
	<b>context</b> 43:20	
	<b>continuous</b> 41:1,5,22 43:6,10	
	<b>contradicted</b> 73:13	
	<b>contradicts</b> 77:17	
	<b>contributed</b> 55:15 56:18 72:18 76:23	
	<b>contribution</b> 76:9	

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: covered..duty

<p>93:24 <b>covered</b> 14:3,4 56:11 <b>Cozza</b> 83:17,19 84:9,15,16,18 <b>crazy</b> 36:2 <b>created</b> 49:10 <b>current</b> 10:6 41:7 <b>currently</b> 80:9</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>damage</b> 44:22 <b>damages</b> 69:7,13 <b>Dardis</b> 11:3 88:9,10 <b>Darryl</b> 68:21 <b>date</b> 41:5,10 71:15 99:11 100:7,9 <b>dated</b> 44:8 68:20 71:15,16 <b>days</b> 54:10 <b>dealt</b> 44:14 66:19,23 <b>December</b> 61:9 65:14 <b>decide</b> 62:10,13,17 <b>decided</b> 70:16 75:20 <b>decision</b> 62:25 63:11 <b>defend</b> 61:24 82:22 85:4,7 86:25 <b>defended</b> 89:24 <b>defending</b> 57:18 58:23 62:3 <b>defense</b> 30:14,20,21 32:6,25 52:25 54:2 55:1,3,9 56:24 61:12 62:13,17 65:2,4 67:4 70:24 80:14,23 82:2,13,23 83:5,7,25 85:4,12,14,18,20 89:18,20 90:12 93:5,15,17,20 <b>defenses</b> 36:4 52:22 76:18 81:5,7,23 <b>defensive</b> 81:6 <b>definition</b> 45:1,21 46:19 <b>demonstrating</b> 89:8 <b>denial</b> 67:23 68:3 <b>denied</b> 48:15 <b>dep</b> 18:19 25:6 <b>depend</b> 10:1 15:16 61:20,21 62:5,6 <b>dependent</b> 86:9</p>	<p><b>depends</b> 9:24 11:8 15:7 41:12,13 <b>Deponent</b> 5:1 <b>deposed</b> 5:13 <b>deposition</b> 6:21 8:1,3,20 18:22 19:1, 12,15 26:11,20 28:19 36:13,16 51:16 55:23 81:15 101:16 <b>depositions</b> 5:17 <b>derived</b> 45:16,20 <b>describe</b> 12:4 14:16 41:2 <b>detailed</b> 26:9 <b>details</b> 25:23 <b>determination</b> 61:13,18 63:12 64:13, 18 95:22 97:7 98:1 <b>determine</b> 40:2 61:22 63:23 64:5 85:16,17,20 90:20 <b>determined</b> 61:25 75:17 <b>determines</b> 82:13 <b>determining</b> 63:7 <b>diagnosed</b> 51:21 52:1,2,15 <b>Dick</b> 86:13,24 <b>Dickie</b> 83:22,24 84:3,9,24 <b>did</b> 6:16 7:25 11:24 12:1,14 15:13,18 16:7,15,21 17:1,2,15 18:21 19:2,5,11, 18,20 22:1 25:5,7,9,18 26:4 34:9 35:5, 6,7,13,15,17,23 36:23 37:9,14,15 52:5 55:21 57:6,25 58:3,6 59:7,9,13 69:10 72:7 73:4,18,24,25 75:15 78:1 84:12, 14,15 93:17 94:10,11,12 95:8,13 <b>didn't</b> 16:18 51:19 55:10 67:20 93:18, 19 96:22 <b>difference</b> 34:7 <b>different</b> 25:3 34:7,8 40:5,14,25 43:5 46:15 47:12 51:14 65:20,22 67:8 86:22 <b>direct</b> 12:7 13:17,21,25 18:13 75:13, 14 79:20 100:12 <b>directed</b> 90:1,4 <b>directing</b> 82:2 89:17,20 <b>directly</b> 93:10 <b>disagreed</b> 74:4 <b>disagrees</b> 74:15</p>	<p><b>discovering</b> 95:3 <b>discovery</b> 13:3 54:11 60:19 <b>discuss</b> 8:3 35:2 <b>discussed</b> 20:14 23:5 26:7 29:14 37:5 81:6 <b>discusses</b> 29:2 <b>discussing</b> 22:16 29:15,19 <b>discussion</b> 20:17 23:15 43:25 50:13 <b>discussions</b> 22:25 24:5,10 <b>disease</b> 42:9 45:2,9 46:20 63:23,25 64:6 69:8,14 70:6 <b>divulge</b> 26:17 <b>doctrines</b> 54:6 <b>document</b> 7:2 28:14 31:12,15 32:22 36:8,16 37:25 44:12 54:22 67:24 68:20 74:21,24 75:3,16,19 76:14,20 78:15 80:17,20 99:13 <b>documents</b> 8:4 19:11,14 33:19 36:12 95:5 <b>dollars</b> 10:3 11:9 60:22 61:1,3 <b>down</b> 5:18,21 13:16 24:9 44:18 46:3 76:16 81:11 <b>Drexel</b> 35:9 <b>driver's</b> 5:3 <b>duly</b> 5:4 <b>DUNNE</b> 5:8 6:24 8:23 9:2,3,25 26:24 30:15,19 36:22 37:2,8,12 38:4,9,12,17 42:18,23 43:4,24 44:3 45:13,24 47:19 49:3 50:14,15 51:2,4 53:16,25 55:25 56:3,7,8 57:4 58:15 59:22 63:5 64:12 65:25 66:4,6 67:1,3 68:14,15 74:20,23 77:3 79:22,23 80:16 81:10,20 82:6,8, 17,21 83:10,13 91:8,12,13 92:11 93:14,19 94:1,2 95:11,20 96:21 97:8, 16,17 98:21 101:3,7 <b>Dunne's</b> 26:16 <b>during</b> 8:6 12:11 21:25 25:18 43:1 44:23 49:14 50:20 51:7 52:20 64:6 69:9,15 70:6 95:15 <b>duties</b> 12:4 13:23 18:13 40:9 <b>duty</b> 82:22</p>
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NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: eagerness..fourth

<b>E</b>	74:24 93:1,5 94:3	<b>factual</b> 27:10,11 37:9,15,17 57:14 58:19 97:25
<b>eagerness</b> 29:21	<b>every</b> 40:5 48:15 63:18 81:16	<b>fair</b> 14:14 15:6 39:1,5 46:20 77:10 81:3,14 97:20
<b>earlier</b> 33:23 38:23 66:18 72:19 73:15 80:25	<b>evidence</b> 49:1 92:19	<b>familiar</b> 32:17 42:10,11 44:20
<b>easier</b> 49:4	<b>exact</b> 44:16	<b>February</b> 25:4 74:9,10
<b>Ed</b> 29:10,19 87:7	<b>exactly</b> 27:15 50:25 76:15	<b>feels</b> 42:5
<b>educational</b> 32:15 35:3	<b>exam</b> 42:6	<b>FFIC</b> 80:9
<b>effect</b> 27:17	<b>examination</b> 5:7 7:9	<b>file</b> 17:25 18:2 19:15,21,24 20:8,11 22:10 23:2 28:16,21 33:17 80:19
<b>effective</b> 100:7	<b>examined</b> 5:5	<b>filed</b> 37:20 87:21 92:13 95:2,25 98:18
<b>elements</b> 64:11,14,15	<b>example</b> 41:17	<b>files</b> 54:23
<b>else</b> 8:5 18:12,21 19:9 24:11 39:8 47:9	<b>exception</b> 5:25	<b>final</b> 31:8
<b>email</b> 20:9 29:6,9,13,22,23 30:4,6 31:5 33:4,9 71:12 73:13 74:3 78:6,24	<b>exclusion</b> 41:15,19	<b>finalizing</b> 31:6
<b>emails</b> 30:2 33:5,14,16	<b>excuse</b> 8:12 11:5 24:3 73:3 74:3,9 85:23	<b>find</b> 79:4
<b>emanating</b> 47:21	<b>executed</b> 78:9	<b>Fireman</b> 69:5
<b>employee</b> 9:6	<b>exhibit</b> 6:21 7:1 28:13 36:3 38:3 44:1 48:12 49:21 68:12 71:9,12 74:18	<b>Fireman's</b> 21:18 23:7,16 24:21 72:8, 17 73:4 74:4 100:4
<b>encourage</b> 89:21	<b>exist</b> 16:23	<b>firm</b> 86:24 87:8,10,12,14
<b>end</b> 17:8 41:10	<b>experience</b> 32:10 61:10 62:25 85:22	<b>firms</b> 85:4 87:2
<b>Engineering</b> 12:17 27:18 91:24 92:5 96:4 99:23	<b>explain</b> 8:16 39:19	<b>first</b> 5:2 23:4 34:22 36:4 41:6,17 54:8, 17,21 58:5 59:11,24 61:8 68:24 69:1,3 75:25 83:6 94:17
<b>Engineering's</b> 29:11	<b>explaining</b> 26:5	<b>flow</b> 55:21
<b>ensued</b> 23:15	<b>exposed</b> 48:21 49:9,13	<b>follows</b> 5:5
<b>entail</b> 16:25 17:7	<b>exposure</b> 41:6,18 42:3 46:7,12,14 47:1,5 48:19 50:3,8 51:13 52:13 58:11 59:18,25 90:20,25 92:16 94:24 96:2	<b>forgot</b> 13:11
<b>entire</b> 12:11 88:20	<b>extent</b> 8:20 14:2 26:20 93:9 95:18 96:16	<b>form</b> 9:23 22:5 27:25 32:3 36:21 38:5 45:10 47:17 48:24 53:14 54:20 57:1 60:3 61:15 63:2 64:8 71:1 77:1,25 78:11 79:19 80:16 81:8 83:1 89:3 93:23 96:9 98:7 100:17
<b>entirely</b> 11:21	<b>F</b>	<b>formal</b> 31:12,15 65:9 73:6 82:10
<b>entities</b> 17:12,13 90:9	<b>face</b> 92:3	<b>formalized</b> 32:11,13
<b>entitled</b> 74:21	<b>fact</b> 18:25 22:2 48:16 63:19 70:19 76:22,24 78:5 79:17 81:17 84:14 89:8 94:17 95:3,8 96:24 97:10 98:3	<b>forms</b> 32:2,5
<b>entity</b> 60:5	<b>factor</b> 94:17 96:23 97:24	<b>forth</b> 7:14 37:10 45:20 46:14 80:5 81:5
<b>equaling</b> 46:19	<b>factors</b> 77:5 92:10,12 94:12,22 95:22 97:3	<b>forwarding</b> 100:23
<b>equals</b> 50:1,6	<b>facts</b> 27:23 39:25 40:2 48:20 49:8 50:10,17 52:10,18,20 54:16 58:10 59:17 62:6,7,11,22 63:6,10,24,25 64:2,14,22 66:7 67:8,21 68:2 73:16 77:6 78:17,18,19 80:9,19,22,24 81:6, 13,18,19,22 89:7 95:6 97:5,19 98:15	<b>found</b> 46:2
<b>essence</b> 28:25 51:19		<b>foundation</b> 37:1 45:23 64:9 95:12 97:14 98:8 100:18
<b>establish</b> 40:10		<b>fourth</b> 52:25 54:2 69:4 81:5
<b>established</b> 71:17 77:22 98:22		
<b>estoppel</b> 81:2,25		
<b>evaluation</b> 15:13		
<b>ever</b> 5:12 22:16 26:4 27:19 31:14 39:15 44:4 47:15,20,21 48:4 70:10,13		



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: frame..insurance

<b>frame</b> 25:18 89:18	<b>happened</b> 64:6	<b>imagine</b> 47:11
<b>full</b> 9:16 69:1	<b>happening</b> 19:7	<b>impact</b> 14:1 90:12 96:5
<b>functions</b> 18:16	<b>Harris</b> 23:13,23 24:10 25:22 29:10 30:6 33:4,10 55:22 65:13 72:22 73:10, 12,17,25 78:5,24 89:1,9 90:1 99:8,18	<b>impacted</b> 67:16
<b>fund</b> 21:18 23:16 72:8,17 75:6 78:3	<b>Harris's</b> 82:1 89:14	<b>important</b> 63:7 96:12 97:11
<b>Fund's</b> 69:5	<b>hazard</b> 9:15	<b>in-house</b> 8:11
<b>funded</b> 71:6	<b>hazardous</b> 9:14	<b>in-person</b> 8:13
<b>funding</b> 73:2,4 74:18,22	<b>he</b> 11:1,8,20 26:4,6 49:13 51:9,11,19, 20,21,22,23,25 52:2,6,11,15 72:24 75:12,17,20 83:21 84:13 87:20,25 88:1,3,5,7,11,19,21 89:17,21,22 90:4	<b>inception</b> 99:11 100:9
<b>Funds</b> 24:21 100:4	<b>he's</b> 51:24 75:23 81:18 87:8,16,23	<b>include</b> 17:11
<b>future</b> 30:9	<b>head</b> 5:21 43:14	<b>included</b> 73:13
<hr/> <b>G</b> <hr/>		
<b>gaps</b> 43:8	<b>health</b> 9:15	<b>incomplete</b> 67:13
<b>Gardner</b> 5:1,11,12 7:1 42:16	<b>healthy</b> 51:20,24	<b>incorporated</b> 96:13
<b>Gardner's</b> 42:22	<b>heard</b> 27:19,22 43:16,19,21,22 50:24	<b>incorrect</b> 89:10
<b>gave</b> 53:11,20 56:22	<b>Hebron</b> 100:25 101:2	<b>indemnification</b> 66:25
<b>general</b> 8:24 14:20,22,25 53:4,6	<b>help</b> 34:25	<b>indemnified</b> 57:21 59:2
<b>generally</b> 8:3 18:24 26:6,7 51:24 62:15,18 67:1,2 85:19	<b>Herbst's</b> 38:3	<b>indemnifying</b> 58:13 59:21
<b>gig</b> 88:6	<b>here</b> 5:22 6:9 7:6,12,22 11:22 28:25 46:14 48:9 54:22 57:14 58:18 68:5 69:18 70:9,18 72:3,10 73:9,14 79:14, 16 81:21 90:4	<b>indemnity</b> 30:14 53:13,21 54:13 55:9 57:7,24 59:6 60:22,25 61:3,14,18 62:1,10,23,25 63:7,11,12,19 64:4,19 65:5,7,16 66:19 67:7 70:12,15,16,24 77:8,13,17 78:8,21,22,25 79:3,15,18 80:6
<b>give</b> 53:8 89:25	<b>him</b> 11:2,4 19:6 26:5,9 52:8 79:20 84:22 93:7	<b>indicate</b> 5:24 27:24 48:20 49:8 50:11, 17 52:11
<b>given</b> 64:2 81:18 85:18 86:20	<b>hire</b> 84:14 85:3,12	<b>indicated</b> 17:15 48:6 74:2 78:2
<b>God</b> 34:25	<b>hired</b> 88:7,21	<b>indicates</b> 92:25
<b>graduate</b> 35:7,15	<b>hires</b> 85:17	<b>individual</b> 6:10
<b>graduated</b> 35:9,14	<b>his</b> 5:3 10:24 11:5,18 51:12,16	<b>Industries</b> 94:25 96:1 98:19
<b>Griffin</b> 8:8,9,10,12 18:20	<b>history</b> 33:24 34:2	<b>inform</b> 85:25 86:2
<b>Grunts</b> 5:20	<b>honest</b> 42:7	<b>informal</b> 32:25
<b>guess</b> 21:18	<b>horse</b> 51:20	<b>information</b> 7:17 16:22 17:10,16,21, 24 18:3,4,6 19:3,17,22 20:5 28:17 36:20,24 37:10,15 54:23 93:10
<hr/> <b>H</b> <hr/>		
<b>Hall</b> 20:21	<hr/> <b>I</b> <hr/>	
<b>handle</b> 9:10,12,14	<b>identification</b> 6:23 36:6 44:2 68:13 71:10 74:19	<b>initiated</b> 17:4 39:24
<b>handled</b> 9:22 13:4 23:2 31:16,18 49:5 70:10	<b>identified</b> 5:2	<b>injury</b> 42:6 44:22 45:2,8,21 46:6,13, 20 47:1,4,10,11 48:19 58:11 59:19 63:23,25 64:5 69:7,13 70:5
<b>handler</b> 20:15 23:7 61:11,17	<b>ill-health</b> 50:1,7,19 51:6,12 52:6,12	<b>Injury,'</b> 45:1
<b>handler's</b> 23:11	<b>Illinois</b> 24:1 26:2 27:5,7,13,18,21 28:6 47:22,24 96:8 98:5,6	<b>instance</b> 41:14
<b>handlers</b> 29:24		<b>insurance</b> 6:22 8:15 9:9,13 14:12 21:12 34:2,20,22 35:1,19 36:3 37:21 69:5 85:5
<b>handling</b> 12:11 21:2,25		

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: insured..make

**insured** 14:17 47:22 85:15 91:3 92:15  
94:12,13 96:13

**insured's** 17:11 47:24

**insureds** 34:7 85:14 87:24

**insurer** 17:17 44:11 76:17 91:1 95:24

**insurers** 34:7,8 76:3

**insuring** 44:15

**Interim** 74:18,21

**interpretation** 24:12 26:3 47:8

**interrupt** 55:19

**investigate** 15:13 16:7,10 38:25

**investigation** 11:11 14:7,9 39:13

**involved** 10:8,19,21 12:14 29:24 37:6

**involvement** 15:18

**involves** 17:9

**involving** 33:5 85:5

**issue** 22:17 23:5 24:12 25:11,20  
26:14 39:22 40:7 58:3 59:9 98:11

**issued** 14:19,23 15:9 16:7,10,11,13  
23:7 24:21 25:2 27:21 41:8 60:12  
68:7,10 70:14,20 74:8 91:23,25 94:19  
95:9 96:4,7,25 97:10 98:20

**issues** 20:14 21:12 22:14 23:17 24:2

**issuing** 22:23

**items** 7:13,21,23

## J

**James** 5:1,11

**Jason** 8:7

**job** 34:23 35:1,19

**Joey** 83:16 84:8,12

**jog** 48:3

**July** 68:20

**jump** 66:5

**June** 12:18,19,25 13:2,20 15:19 25:18  
35:11 60:15

**jurisdiction** 85:18 86:4,22

## K

**kind** 32:21 36:2

**Kirkwood** 94:25 96:1 98:19

**Kirkwood's** 92:17

**knew** 67:10

**know** 5:24 6:6 10:11 11:6,19 13:14  
15:11 16:10 31:6,7 38:18 42:4,13 43:6  
44:16 45:25 47:9 63:14,19 64:21  
65:21 72:21 75:16 77:23 81:14 83:4,6  
86:9 87:8,13,23 88:1,3 92:24 95:3,4,6

**Knowing** 64:20

**knowledge** 67:11

**known** 7:18 16:23 58:9 59:16 62:24  
63:11 80:9

## L

**lashes** 81:1,25

**Lamorak** 6:11,21 7:18 8:15,17,22 9:5,  
9,11,13,17,20,21 14:18,24 16:13,17  
17:17,20 27:23 34:6,9,11 36:3 37:21  
38:25 48:15,19 50:10,16 51:5 52:10  
54:11 60:10 72:16 73:16 74:14 75:5,9  
76:8 78:5 80:22 81:7 85:11,15 92:19  
95:8,14 96:10,12,22 97:9,19 98:23

**Lamorak's** 6:17 7:7,13,16 8:10 28:11  
37:23 38:13,21 42:20 49:16,18 53:10,  
19 54:18 56:21 57:5 60:5,7 64:23  
67:21 68:1 70:22 76:24 80:13 81:23  
91:16 95:22 96:5,17 97:2,15,24 98:1,  
10,15

**language** 44:11,21 45:3,6,8,16,19  
46:2 69:17,20,23 79:21 80:3 83:3

**last** 79:25 100:13

**late** 13:9 71:22

**laundry** 81:16

**law** 20:18 21:4,8,11,16,19,20 22:13  
23:9,25 24:1,12 25:11,20 26:2,14  
27:2,4,5,8,13 28:6,15 29:2 35:13  
39:22 40:8 42:6 91:17,19 92:7 94:18  
95:16,23 96:14,20 97:3,5,12 98:2,11,  
16

**Lawsuit** 80:7

**lawyers** 85:12 86:18

**leader** 10:22

**learned** 26:12 39:16

**least** 94:19

**led** 22:12

**legal** 78:12 95:18 96:17 97:2,15 98:10

**letter** 23:16 24:22 26:8 44:7 49:21  
71:5 74:3,9,13,16 79:5,8,10,11 100:2,  
4,10,13,14

**letters** 25:6

**level** 10:2 11:19

**liability** 14:3 18:9 76:3,11 90:17,18,  
21 91:2

**license** 5:4 35:22,24

**like** 15:15 32:22 34:1 42:5 44:15 55:21

**likely** 18:5

**limit** 11:10

**line** 69:4

**list** 81:16 86:5,13,15,17

**listed** 72:10

**litigation** 25:12,13,17 27:5

**little** 7:5 33:22

**local** 83:17 84:1,6,10,18 94:4

**locate** 16:21

**located** 57:22 59:4 86:3 92:5,17 95:1  
96:1 98:19

**long** 5:22 19:2 56:5

**look** 13:14 19:11 25:5 34:3 38:14,19  
44:9 46:5 68:24

**looked** 15:23,25 20:5 56:14

**looking** 7:21 33:6,20 38:13 48:11  
54:1 75:25 76:2

**lot** 9:1 47:12

## M

**made** 61:5 63:1 90:10

**mailing** 92:3,24

**Maine** 5:3

**make** 6:14 49:4 50:24 55:22 61:12,13,  
17 63:12 64:13,18

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: makes..occurred

**makes** 11:11 42:12  
**making** 76:9,18  
**managed** 48:8  
**Management** 34:5  
**Management's** 8:13  
**manager** 12:7 13:17,21,24 18:12  
**manifestation** 42:7  
**manufacturing** 67:12  
**March** 13:10 23:6 25:1,4,18 44:8  
49:20 60:2 71:23 74:9,13,16 79:4,5,11  
**marked** 6:22,25 36:5 44:2 68:13  
71:10,12 74:19 99:8,18  
**matter** 8:24 10:20 11:14,24 12:21  
14:11 16:1 21:13 22:1,4 24:13,23  
53:13,22 55:10,16 58:6 59:12 62:23  
67:14 72:13 76:23 80:8 82:15,18 87:6  
**matters** 7:8 10:22 29:12 34:6,10,11  
39:4 85:5  
**Matushek** 29:10,23 33:4,5 87:7,11,  
12,13,15 88:16 89:1,9,14,21 90:2,5  
94:4  
**Matushek's** 29:20  
**maybe** 15:17 40:7 48:3 71:18  
**Mccamey** 83:22,24 84:3,10,24 86:24  
**Mccamion** 86:13  
**Mccarthy** 11:17,24 75:11,15  
**me** 6:6 8:11,12,18 11:5 12:4 13:14  
19:13 24:3,19 27:9 34:1 38:18 39:19  
47:3 48:25 62:9 70:7 73:3 74:3,9 75:2  
85:19,24 86:4,21 89:13,25 99:3  
**mean** 9:10 12:22 14:8 15:8,15 16:9,19  
18:23 30:14 32:4,8,12 42:4 45:11  
46:13,24 47:1,7,10,12 53:4 55:20  
61:2,16 71:4 76:13 77:11,19 78:15  
81:10,14 82:19 83:2 84:20 85:1 87:19  
88:3 89:20 90:3 92:1 93:3,15,18  
95:13,21 96:18 98:22,25 100:22  
**meaning** 18:2 90:8  
**means** 45:2 47:4 48:5,19 87:20  
**meant** 93:22,24  
**meeting** 8:6  
**memorialized** 31:24

**memory** 13:13 48:3  
**mention** 13:12  
**mentioned** 64:24 66:8 87:4  
**meso** 52:1  
**mesothelioma** 51:17,21  
**met** 8:2  
**methods** 40:19  
**middle** 46:6  
**million** 10:15 11:9,21  
**mind** 68:4  
**misheard** 86:19  
**missing** 15:5,8  
**mistaken** 77:4  
**misunderstood** 57:9 93:22  
**money** 56:18,23  
**month** 71:24  
**more** 9:1 19:6 89:23  
**Moreover** 80:1  
**mouthful** 12:9  
**multiple** 41:9

## N

**name** 5:9 17:11 20:22 23:11 66:16  
83:23  
**names** 86:6,22  
**national** 19:18,23 20:2,4,18 21:3,7,  
17,20 22:2,9,17 23:25 24:11 25:19  
26:1,12 27:1,7,20 28:5,14,17,22,23  
29:6,11 33:7,18 37:20 44:8 53:11,19  
54:5,12 55:8,10,14,15 56:9,17,21,24  
57:6,15,17 58:2,8,20,22 59:8,15,24  
60:12 68:7,21 70:20 71:6 75:5 76:8  
87:5,16,23 88:1,5,17 91:17,20,22  
92:4,21,22 93:1,6 94:4,7 95:9 96:3,6,  
24 99:4,10  
**nationally** 87:21  
**need** 5:19,23,25 6:3 63:18 64:4 90:20  
91:1  
**negotiating** 16:4  
**Never** 68:3

**new** 85:23  
**Newark** 99:24 101:1  
**next** 11:2 49:25 50:5 54:15  
**Nilles** 87:11,13,15  
**Nineteen** 38:16  
**nobody** 76:10  
**nods** 5:21  
**nos** 5:20 44:1 68:12 71:9  
**Notary** 5:4  
**notation** 22:9  
**note** 21:15 29:1 55:22  
**noted** 16:3  
**notes** 20:8,12 22:20 28:21,24 33:17  
**notice** 6:21 19:4,16 37:19  
**noticed** 58:4 59:10  
**notwithstanding** 71:4  
**NSCLM000187** 68:12  
**NSCLM009436** 44:1  
**NSCLM009826** 71:9  
**number** 10:14 45:21 76:2  
**numbers** 17:14

## O

**object** 57:25 59:7 78:11 79:19 81:8  
82:25 93:8 95:17 96:15  
**objection** 8:19 9:23 22:5 27:25 30:13  
32:3 36:21 37:1,11 38:5 42:14 45:10,  
22 47:17 48:24 53:14 54:20 57:1,20  
58:5 59:1,12 60:3,8 61:15 63:2 64:8  
70:25 71:1 77:1,25 80:16 82:6 89:3  
92:8 93:23 95:11 96:9 97:1,13,14,21  
98:7,9 100:17  
**objections** 64:16  
**obligated** 43:9  
**obligations** 39:24 43:3  
**obtain** 19:3 35:23 90:5  
**obtained** 93:10  
**obtaining** 35:21  
**occurred** 24:25

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: occurs..problem

<b>occurs</b> 44:22	<b>P.O.</b> 99:23	<b>please</b> 5:9,24 6:3,6 41:2 46:3 53:17 58:16
<b>off-the-record</b> 43:25 50:13	<b>page</b> 7:9 44:10,25 49:22,23 68:25 69:1 79:24 100:13	<b>point</b> 15:3 24:21 25:8 87:15
<b>office</b> 98:6	<b>paid</b> 53:13,22 54:13 56:17,23 70:12, 15 77:8	<b>pointed</b> 77:6
<b>official</b> 82:4	<b>panel</b> 84:25 85:2	<b>polices</b> 95:9
<b>Ohio</b> 20:17 21:19 22:13 23:25 29:2 57:23 59:4 83:14 86:14 87:1 91:24 92:5,7,14,16,18,21,25 94:11,13,18,20, 24 95:1,2,16,23,24,25 96:1,2,4,19,20 98:1,16,18,19,20,24 99:24 101:2	<b>paragraph</b> 37:23 38:15 46:4 48:11, 12,16 49:23 68:24 69:1,3 76:2 79:25	<b>policies</b> 14:7,9,12,19,22,25 15:4,9 16:4,13,16 17:17 20:7,19 21:20 26:3 27:14,20 33:19 41:7,8,11,16 42:25 43:1,8 44:14 55:11 69:9 70:4 74:7 91:18,20,23 92:4,20 93:2,6 96:3,6,7, 25 97:6,10 98:20,24 99:4
<b>on-the-job</b> 39:12	<b>part</b> 14:6 15:12 40:9 54:6	<b>policy</b> 16:12,14,21,22,24 17:1,4,6,8, 13,24 18:3,6 19:17 24:12 41:7,14,18 44:20,23 45:16,19 64:7,20 69:6,14,16 70:6 83:3 92:7,21,22 94:5,19 96:3,24 98:25 99:10 100:8,9,11
<b>once</b> 78:2	<b>participate</b> 73:5	<b>policy's</b> 39:23 43:2
<b>one</b> 5:25 13:11 15:21 25:3,4 28:9 29:1,7,8 30:3 36:11 38:24 40:25 41:9 47:8 54:7,9 61:8 65:23 66:7 68:16 73:16,25 74:1 75:20,23 77:5 78:17,19 87:15 89:7 94:12 97:19,22	<b>participated</b> 57:18 58:23 70:23	<b>position</b> 6:17 22:3 26:1,13 27:1,4,20 28:5 49:17,19 55:8,13 56:12 57:5 60:10,13 67:21 68:1 69:6 70:22 72:17 74:4,6,11,12,15 91:16 96:11
<b>ones</b> 25:3	<b>participating</b> 72:9	<b>positions</b> 7:13
<b>online</b> 35:20	<b>particular</b> 65:7 76:12 83:9	<b>possible</b> 81:17
<b>only</b> 33:8 65:23	<b>parties</b> 32:19 71:8 78:9 101:14	<b>postgraduate</b> 35:12
<b>operating</b> 30:17	<b>pay</b> 14:4 18:10 62:1 64:4 70:16 75:5 78:21,25 79:3,15	<b>potential</b> 29:2 78:6 90:15,17,19,24
<b>operations</b> 27:18	<b>payment</b> 67:16,24 68:2 79:17	<b>potentially</b> 14:13 25:1
<b>opinion</b> 60:4 67:15	<b>payments</b> 76:19	<b>practice</b> 57:16 58:21 86:7,11
<b>order</b> 19:3 56:2 101:10,14	<b>pending</b> 6:1 51:1	<b>predecessor</b> 83:16 84:9
<b>other</b> 5:17 9:15 16:22 24:1 28:13,16 30:2,3 31:18 33:5,9,14,18 41:21,22 43:12 66:7 70:4 81:22,23 84:21 86:10, 12 87:2,24 88:22 92:10,12 94:22	<b>percent</b> 39:7,9	<b>preparation</b> 18:19,22 25:6 26:11,19 28:18 33:6 35:21 36:12,15
<b>others</b> 43:15	<b>percentages</b> 31:10	<b>prepare</b> 7:25 19:12 35:18
<b>otherwise</b> 93:12 99:10	<b>perhaps</b> 39:9	<b>prepared</b> 7:22 80:18
<b>our</b> 5:18 8:14 17:9 85:25 86:21	<b>period</b> 12:12 14:25 15:10,14,16 31:1 43:1 44:23 49:14 50:20 51:8 52:20 64:7 70:6 88:20	<b>present</b> 8:6 91:1
<b>out</b> 59:25	<b>periods</b> 69:15,16	<b>presented</b> 7:6,12
<b>outside</b> 69:14	<b>permanent</b> 17:10	<b>pressing</b> 12:20,23
<b>over</b> 5:16 12:21 13:1,2 17:3 50:16 60:16	<b>personal</b> 7:19	<b>pretty</b> 91:8
<b>oversees</b> 87:20	<b>personally</b> 42:17	<b>previously</b> 16:17 57:21 59:2 99:8
<b>owe</b> 55:9 61:14	<b>peruse</b> 44:10	<b>primarily</b> 39:3
<b>owed</b> 61:18 63:8,20	<b>Pete</b> 83:17 84:9,16	<b>prior</b> 34:13,14 55:6 65:4 73:19,21 98:8
<b>own</b> 7:19	<b>phase</b> 13:3	<b>probably</b> 12:17 34:3 52:16 88:13,22
	<b>Pierre</b> 84:16	<b>problem</b> 56:7
	<b>place</b> 58:7 59:13 69:15 92:16 94:25 96:2	
	<b>Plaintiff</b> 54:4 66:17 90:7,9 94:23 95:24 98:17	
	<b>plan</b> 5:22 95:15	
	<b>plant</b> 92:17	
<hr/> <b>P</b> <hr/>		
<b>p.m.</b> 38:11 66:3 91:11 101:16		

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: produce..resolving

<b>produce</b> 16:15	<b>reading</b> 51:15	<b>release</b> 80:14,23 81:24
<b>produced</b> 17:21,23 18:1 20:1 54:22 93:2	<b>reason</b> 28:11	<b>relevance</b> 64:2
<b>product</b> 46:8	<b>reasonably</b> 7:18	<b>relevant</b> 62:22 63:10,24
<b>production</b> 5:3 19:19	<b>reasons</b> 28:9 80:5	<b>relying</b> 76:24
<b>products</b> 48:22 49:10 60:1,2 67:13	<b>recall</b> 10:25 11:7 12:24 13:7 14:21 20:4,7,12,13,16,21,22,24 21:1,6,15, 21,23 22:16 23:4,10,21,22,23 24:9,20 25:2,23 26:5 28:23 29:1,8,9,13 30:2, 23 31:1 33:6,9,15,19 43:14 47:20 51:15,25 52:8 61:4 66:14,21 71:19 88:12 99:6	<b>remember</b> 23:19 28:16 42:8 83:23 99:3
<b>progressed</b> 30:7		<b>rep</b> 58:2,3 59:8,9
<b>promised</b> 80:11		<b>repeat</b> 22:6 24:7 49:2 53:15 55:5
<b>property</b> 36:2 44:22		<b>rephrase</b> 8:23 9:2 94:1
<b>propose</b> 78:1	<b>recalled</b> 29:7	<b>report</b> 90:8
<b>proposed</b> 77:14,21,23 78:20	<b>Recaris</b> 77:20	<b>REPORTER</b> 53:18 58:17 101:5,9
<b>protective</b> 56:2 101:10,12,13	<b>received</b> 23:15 37:19 39:11 92:20	<b>reports</b> 90:5,6,11
<b>provide</b> 7:12 26:22 36:23 37:9,16 57:14 58:19 81:16 86:4,21	<b>recent</b> 22:24	<b>representative</b> 75:18
<b>provided</b> 19:13 31:10 37:17 54:23 80:18 83:3 86:14,17 93:5,7 94:3,5	<b>recess</b> 38:11 66:3 91:11	<b>representatives</b> 33:12
<b>providing</b> 17:9 31:7 33:11	<b>recitals</b> 32:18	<b>request</b> 17:9 61:5 85:23
<b>Public</b> 5:4	<b>recognize</b> 31:21 79:9	<b>requesting</b> 61:3
<b>purposes</b> 47:13 63:21 65:16 66:24 67:4,7 76:24 96:14	<b>recollection</b> 60:24	<b>reservation</b> 23:8,16 24:22 26:8 56:15 58:5 59:11 62:3 68:8 69:20,24 70:14, 21 79:8,9
<b>pursuant</b> 76:19 77:9 101:9,11,13	<b>recommend</b> 86:6,12	<b>reserve</b> 70:11 101:12
<b>purview</b> 7:19	<b>recommendation</b> 84:19	<b>reserving</b> 70:2 78:10
<b>put</b> 30:8 78:5	<b>recommended</b> 83:16 84:6,9,21	<b>resident</b> 94:24 95:25 98:17
<hr/>		
<b>Q</b>		
<hr/>		
<b>question</b> 6:1,2,5 22:6 24:7,17 25:8,16 28:2 36:8 49:2,15 50:1,5,24 51:1 52:4, 5 53:15,24 54:15,17 55:6 56:20 63:4 67:19 69:21 73:23 78:12 81:13 83:6 91:14 92:9 93:20,23 95:21 96:18 98:9	<b>records</b> 17:9	<b>Resinoid</b> 14:13 15:4,19 20:18 27:17 29:11 49:11 57:19,22 58:14,24 59:3, 21 67:12 82:17 83:5,7,25 87:17,22 88:2,6,17 90:13 91:23 92:2,4,20,25 93:2,7 94:5,7 96:4 98:4,20 99:15,21, 23
<b>questionable</b> 79:18	<b>regard</b> 6:17 7:13 11:23 14:10 15:3 18:7 22:3 23:17 24:22 26:13 27:1 39:3,12 40:15 49:21 53:12,20 64:22 65:1,11 66:10 67:11 68:8 70:21,23 77:6	<b>Resinoid's</b> 46:7 48:21 60:1 87:24
<b>questions</b> 5:19 6:4,15 11:10 42:16	<b>regarding</b> 55:6 68:20	<b>Resinoid-ciokajlo</b> 29:25
<b>quick</b> 65:25	<b>registered</b> 98:6	<b>Resinoid-containing</b> 60:1
<b>quite</b> 24:16 53:23	<b>regular</b> 40:8	<b>Resolute</b> 8:12,17 9:5,7,20,22 12:6, 12,16 14:10 34:4,10,13,15,22 35:1 39:12 83:19 84:13,14,20,21,24 85:2,3, 5,6,9,13,17 86:25 88:11,21
<hr/>		
<b>R</b>		
<hr/>		
<b>Raymark</b> 43:17	<b>regulations</b> 5:17 13:12	<b>Resolute's</b> 84:19
<b>read</b> 50:25 51:18 53:16 58:15 76:5 80:9	<b>reimbursement</b> 53:12,21 54:13 55:6 56:23 57:3,7 78:7	<b>resolution</b> 10:19 13:5 23:1
	<b>related</b> 50:2,8,20 51:7,12 52:7,12	<b>resolve</b> 9:21
	<b>relates</b> 55:4	<b>resolved</b> 13:8,9
	<b>relating</b> 58:6 59:12	<b>resolving</b> 29:24
	<b>relationship</b> 8:17 9:5	



NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: respect..signing

<b>respect</b> 17:24 23:8 30:9 33:10 57:3 58:11 59:18 65:4,5,6 80:25 92:15 96:19 98:9	<b>run</b> 16:12 86:8,11	<b>sending</b> 73:10
<b>respond</b> 43:9 69:6	<b>Ryan</b> 12:2	<b>sent</b> 29:23 98:23 99:22 100:2,14
<b>responded</b> 69:12	<hr/> <b>S</b> <hr/>	<b>sentence</b> 63:17 79:25
<b>responding</b> 29:22	<b>said</b> 15:15,22 18:8 19:21 24:18,25 29:5 38:23 56:10,15 66:13,19 72:20 75:12 77:12 84:5,8 86:16,20 89:5,6 94:9,10,14	<b>separate</b> 74:8,11
<b>response</b> 80:18	<b>same</b> 57:23 59:5 60:8 64:16 77:9,14 80:24 81:1 97:1,14,21 98:3,8 99:18,25	<b>serving</b> 8:14
<b>responsibilities</b> 12:5 13:24 18:14 40:10	<b>satisfactorily</b> 5:2	<b>set</b> 7:14 37:10 45:20 46:14 80:5 81:5
<b>responsible</b> 12:10 14:11 36:18 58:13 59:20	<b>saw</b> 22:9	<b>set-offs</b> 90:15
<b>responsive</b> 19:3 36:24	<b>say</b> 16:18 18:15 31:6 32:8 37:17 39:5, 9,25 42:4,6 46:16 50:4 57:16 58:21 61:3 62:16,20 63:14 65:8,14 69:10 71:3 75:7 77:2 78:23 79:17 80:24 81:3 82:1 84:15 89:19 90:11,23 91:25 93:14,17 94:10,11,12 95:13	<b>settle</b> 9:17 29:21
<b>restate</b> 51:2 85:24 94:15	<b>saying</b> 21:16 66:21 73:24 78:24	<b>settled</b> 10:12 71:19,22
<b>result</b> 60:11	<b>says</b> 45:1 48:17 52:15 54:4 69:5 70:8 76:14,17,21 77:19,20 78:9,16 80:10 92:2 98:25 99:1 100:14,22	<b>settlement</b> 10:2,4,6,9 11:25 12:1 55:16 56:18 67:23 74:18,22 75:7 76:10 78:3
<b>results</b> 69:8,14	<b>scheme</b> 83:25	<b>settlements</b> 30:9 56:24
<b>retain</b> 84:17 85:7,13	<b>School</b> 35:13	<b>several</b> 86:6,22
<b>returned</b> 100:15,19	<b>Schulze</b> 8:7,18,24 9:23 18:20 22:5,7 26:16 27:25 28:3 30:13 32:3 36:21 37:1,4,11 38:5 42:14,20 45:10,22 47:17 48:24 50:12,23 53:14 54:20 55:18 56:1,4 57:1 60:3,8 61:15 63:2 64:8,16 66:2,24 71:1 77:1,25 78:11 79:19 81:8,12 82:15,25 83:8 89:3 91:5 92:8 93:8,17,21 95:17 96:9,15 97:1, 13,21 98:7 100:17 101:8,11	<b>Shannon</b> 20:21
<b>reveal</b> 16:18	<b>search</b> 16:12,15,21,24 17:1,4,6,8	<b>share</b> 30:9,11,16,23 31:3,4,7,8,13,22 32:1,24 33:1,11 57:19,24 58:1,25 59:5,7 64:24 65:1,3,5,6,8,12,15,19,20, 22 66:9 71:7 72:2,9,12,22,23,25 73:3 77:9,13,17,21,24 78:2,6,20,21 79:2 82:4,10
<b>review</b> 7:8 8:3 14:1,6 18:8 19:18 36:7 38:3,21 40:2 68:23	<b>searches</b> 17:24	<b>shares</b> 32:6,9,17 33:13 75:5
<b>reviewed</b> 19:15 28:18 29:5 36:12,14	<b>searching</b> 38:8	<b>she</b> 5:21 8:13 66:5
<b>reviewing</b> 37:25 44:12 95:5	<b>second</b> 46:4 79:24	<b>She's</b> 5:18
<b>Rich</b> 25:21	<b>see</b> 45:3 46:9 48:2,3,14,17 69:17,18 76:6 79:14 80:3,12 99:12,16 100:19	<b>short</b> 38:7
<b>Richard</b> 23:12 24:10	<b>seeing</b> 70:20	<b>shortened</b> 100:23
<b>Rick</b> 29:10 30:6 33:10 65:13 82:1	<b>seek</b> 54:13 56:23 57:7 78:7	<b>shortly</b> 51:20
<b>right</b> 8:5 12:3 18:17 29:1 38:7 41:25 44:18 50:25 52:17,21,24 53:2,9,11,20 56:22 57:6 63:22 69:10,25 70:3 72:19 76:15 95:20 97:19 99:25 100:3,21 101:3	<b>seeking</b> 53:12,21 95:18 97:15 98:10	<b>should</b> 30:8 33:22 55:19,23 56:4 57:16 58:21 72:12,17 75:7 90:11
<b>rights</b> 23:16 24:22 26:8 56:15 62:4 68:8 69:20,24 70:11,14,21 78:10 79:8, 9	<b>seen</b> 7:2 31:24 36:9,16 44:4 68:16,17 74:24 93:1	<b>show</b> 99:2,7,17
<b>risk</b> 30:25 72:18		<b>showing</b> 6:25 71:11
<b>Robert</b> 75:11		<b>shows</b> 100:14,25
<b>ROR</b> 58:3 59:9 60:12 68:11		<b>sic</b> 66:10
<b>Rory</b> 91:5		<b>sickness</b> 45:2,8 46:20 49:21 50:1,6 63:23,25 64:6 69:8,13 70:5
<b>ruin</b> 55:20		<b>sign</b> 75:15,18
<b>rule</b> 59:25		<b>signatures</b> 32:18
<b>rules</b> 5:16 13:12		<b>signed</b> 75:8,10,24 78:8
		<b>significant</b> 63:24
		<b>signing</b> 76:13

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: similar...theory

<b>similar</b> 44:17	<b>states</b> 44:21	59:8,16,25 60:12 68:7,21 70:20 71:6
<b>simply</b> 49:7 56:20	<b>still</b> 13:3 24:16 70:11 71:6 95:3,4	75:5 76:9 91:18,20,23 92:4 93:2,6
<b>Sinars</b> 87:15	<b>stipulations</b> 101:15	94:7 95:9 96:3,7,24 99:4,10
<b>since</b> 30:18 34:5	<b>stopped</b> 67:12	<b>Surety's</b> 21:18 23:25 26:13 27:1,20
<b>single</b> 63:18	<b>strategic</b> 86:2,14,18,21	28:5,22,23 55:8 92:21,22 94:5
<b>sir</b> 7:2 36:8 38:14,20 52:21 59:23	<b>strike</b> 12:5 14:16 16:25 20:25 24:19	<b>Surety-produced</b> 20:5
<b>sit</b> 7:22 11:22 28:25 48:9 68:5 70:18	25:9 28:9,12 31:2,16 32:14 36:23	<b>sworn</b> 5:4
73:9 81:21 90:4	47:13 48:10 67:24 68:3,7 72:20 75:25	<b>symptoms</b> 51:10,12
<b>Skokie</b> 98:6	94:8,10	
<b>sole</b> 28:11	<b>stuff</b> 36:2	<b>T</b>
<b>Solomon</b> 83:16 84:8,12	<b>subject</b> 88:22	<b>take</b> 5:21,23,25 6:3 35:17 58:7 59:13
<b>Solutions</b> 34:19	<b>subjective</b> 56:2	65:25 89:22 91:7,9
<b>some</b> 5:16 8:4 19:22 20:7,8,9,14,17	<b>subsequent</b> 41:8 72:22,25 73:10,24	<b>taken</b> 38:11 60:10,13 66:3 72:16
22:9 23:7 24:21 29:5 36:1 37:6 56:17	77:23 78:1	91:11 96:10
100:23	<b>substance</b> 23:22 25:25 37:6 54:24	<b>takes</b> 69:15
<b>somebody</b> 60:25 94:13	58:12 59:19	<b>taking</b> 5:18 18:25 26:1 55:14
<b>something</b> 6:16 13:13 27:16 39:8	<b>substantially</b> 89:17,19	<b>talk</b> 18:21 19:2 25:19
40:8 89:25 90:2,3 97:6,18	<b>suffered</b> 51:6 52:11	<b>talked</b> 18:18 25:21 28:14 33:3,16
<b>sorry</b> 20:25 33:7 46:16 49:22 50:4,23	<b>suffices</b> 5:21	43:10 46:18 67:5 79:7 82:9
55:18 56:5 62:16 68:6 69:21 79:5	<b>suggested</b> 65:13,19,21 72:3,5,22,24	<b>talking</b> 21:10,11 22:24 23:1 26:21
86:16 88:15 89:12 90:25 92:21 94:15	<b>suggesting</b> 30:7	45:5 70:3
<b>sound</b> 42:10	<b>summary</b> 37:18	<b>talks</b> 46:6
<b>sounds</b> 42:11	<b>supervisor</b> 18:24 75:13,14	<b>tangent</b> 13:16
<b>speaks</b> 78:15	<b>supervisors</b> 10:18,21	<b>team</b> 10:22 85:25 86:1,14
<b>specialist</b> 17:10	<b>support</b> 66:8 67:23 68:3 80:20,22	<b>teams</b> 86:18
<b>specific</b> 9:1 17:13 22:18,22 49:12	81:22 98:15	<b>tell</b> 75:2 89:13 99:9
58:5 59:11 65:15 68:11 70:17 85:3	<b>supporting</b> 64:14,23 77:7 78:18	<b>telling</b> 19:6
90:1,3	<b>supports</b> 81:7 89:15	<b>ten</b> 54:10
<b>specifically</b> 20:6 24:9 28:15 37:23	<b>suppose</b> 47:7 61:20,24 62:5 64:10,21	<b>term</b> 31:21 39:23
68:24 69:4 70:14 83:5 99:6	<b>supposed</b> 27:17	<b>terms</b> 6:15 32:18 36:19 46:24 73:2
<b>specifics</b> 28:24 43:14	<b>sure</b> 5:15 6:14 11:12,21 12:22 14:8,	<b>test</b> 13:13
<b>stamp</b> 100:24	10,15 15:7 16:9 21:14 22:8 24:8,16,18	<b>testified</b> 5:5 22:8 51:23 73:15 77:20
<b>start</b> 34:9 50:16	26:8,16 28:1,4 32:4,12,14 33:25 35:4	80:25 95:23 96:20
<b>started</b> 34:12 60:25	38:1,9 40:17 41:20 42:5 45:11 46:18	<b>testify</b> 7:17,23 51:19 52:5 78:17
<b>starting</b> 35:4 54:8	48:1 49:4 50:5,24 51:10,22 53:23 54:1	98:14
<b>state</b> 5:9 91:19	60:5 63:3,6 66:2 67:2,18,20 68:17	<b>testifying</b> 52:8 95:7 97:4
<b>state's</b> 91:17	77:4 79:22 82:19 83:11 85:1 91:4 93:3	<b>testimony</b> 26:22 38:3 52:15
<b>stated</b> 81:24	97:16	<b>the--</b> 42:25
<b>statement</b> 14:14 15:6 39:1 46:21	<b>Surety</b> 19:19,23 20:2,19 21:3,7,20	<b>theories</b> 40:25
77:10 89:10 97:20	22:2,10,17 24:11 25:19 26:1 27:7	<b>theory</b> 41:23 76:5,12
	28:14,17 29:6 33:7,18 37:20 44:9	
	53:11,20 54:5,12 55:11,14,15 56:10,	
	17,21,25 57:6,16,17 58:2,9,20,22	

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: thereabouts..years

<b>thereabouts</b> 30:18	<b>two</b> 25:3	
<b>things</b> 5:17 13:11 15:21 38:24 47:12	<b>type</b> 11:8	<b>V</b>
<b>think</b> 11:8 15:22 18:7,17 20:16 22:8 23:4 24:3,4,18,25 29:5 33:3,21 38:23 41:24 42:15 48:6 49:1 60:14 64:24 66:7,13,18 70:17 71:2,17 72:19 73:15 74:10 77:5 81:9,12 82:9 84:8 89:6 94:9	<b>U</b>	<b>Vanessa</b> 68:21
<b>third</b> 42:8 83:23	<b>Uh-huh</b> 44:19	<b>various</b> 19:14
<b>third-party</b> 9:8	<b>ultimate</b> 12:1 37:19 90:18,21,24 91:2	<b>vary</b> 40:22,23
<b>thought</b> 22:13 84:5 86:16 93:21,24	<b>ultimately</b> 73:1,2,3 74:12,16 75:22,23	<b>Vermont</b> 35:13
<b>three</b> 34:17	<b>uncovered</b> 56:25	<b>versus</b> 6:16 39:8
<b>through</b> 7:14,21 15:1,2 18:18 33:23 44:1 54:7 68:12 71:9 98:4	<b>undeliver</b> 100:20	<b>vis-a-vis</b> 89:14
<b>time</b> 5:23 15:16 20:15 23:4 25:18 30:25 31:2 56:5 59:24 60:18,22 61:25 67:14,22 72:18 74:5 100:23	<b>undeliverable</b> 100:16	<b>vocal</b> 89:23
<b>title</b> 12:6	<b>under</b> 14:11 30:17 46:4 57:19 58:24 62:3	<b>voice</b> 8:18
<b>today</b> 5:23 6:9 7:7,12,22 8:1 18:19,22 19:1,12 25:6 26:12 36:13,16 48:10 60:12 68:5 73:9 81:21 90:4 95:7	<b>underlying</b> 21:13 80:7	<b>W</b>
<b>together</b> 30:8	<b>understand</b> 6:12 7:11,16 9:19 11:13 23:14 24:17 25:15 28:1,4 46:13,25 47:1 53:24 54:9 63:3 67:18 69:19,23 81:17 91:2	<b>waiting</b> 91:15
<b>told</b> 5:16	<b>understanding</b> 9:4,6 17:22 19:25 25:10 26:25 27:3,6 28:8,11 39:21,22 40:13,18,21,24 41:4 42:1,2,21,24 43:7,11 45:7,15 46:11,15 47:2,4 53:3, 5,6,8 55:3,5,12 57:2,12,13,15 58:8,17, 19 59:15 65:17 70:1 71:5 73:2 79:2 91:22	<b>waive</b> 57:6
<b>Tom</b> 12:2	<b>understood</b> 6:7,19 13:15	<b>waived</b> 54:12 76:18
<b>top</b> 43:13 99:20	<b>underwriting</b> 17:11,12	<b>waiver</b> 53:3,7 54:9 64:23 66:8 67:17 73:17 76:25 77:7 78:19 80:25 81:24 89:8,15
<b>topics</b> 8:20 19:4	<b>uninsureds</b> 85:7	<b>waives</b> 78:6
<b>toward</b> 56:18	<b>unit</b> 86:21	<b>waste</b> 9:14
<b>track</b> 24:8	<b>units</b> 86:2	<b>weakened</b> 50:2,7,19 51:6 52:6
<b>training</b> 39:12,15	<b>University</b> 35:10	<b>well</b> 15:15 17:12 24:19 25:9,17 31:5, 16 32:8,14 34:8 48:10 54:1 61:2,4,22 68:3,19 71:18 84:23 89:6 98:22
<b>trigger</b> 39:17,20,23 40:11,15,19 41:1, 5,6,22,24 42:1,3,8,13 43:1,2,6,12,17, 21 45:6,7,15,19 46:12,19 47:13,16 48:4,7 55:10 63:22	<b>unlikely</b> 80:8	<b>went</b> 18:17 54:24
<b>triggered</b> 40:3 41:11,17 64:20 70:4 74:7	<b>unsound</b> 50:2,7,19 51:7 52:12	<b>whole</b> 54:6
<b>triggering</b> 42:21	<b>until</b> 13:5 56:6 58:7 59:14 62:24 63:10	<b>wording</b> 44:17
<b>triple</b> 41:24 42:1,12 43:11,16 45:6,7, 15,19 46:12,19 47:15 48:4,7	<b>up</b> 11:1,9,20 53:9,11,20 56:22 97:6	<b>words</b> 51:23 56:22 70:4
<b>true</b> 59:24 65:18 90:22 91:3	<b>upon</b> 10:1	<b>work</b> 33:24 34:2 35:18 39:7 84:12
<b>trusts</b> 90:10,11	<b>use</b> 46:12	<b>worked</b> 34:17 84:13,22
<b>turn</b> 52:21	<b>used</b> 51:23	<b>working</b> 34:4,12
<b>turning</b> 52:24 79:24	<b>uses</b> 86:25	<b>works</b> 41:3 88:11
	<b>usually</b> 32:7	<b>writing</b> 31:3
		<b>written</b> 69:18 73:6 80:20
		<b>wrong</b> 24:19
		<b>Y</b>
		<b>years</b> 17:13 34:18 57:20 58:25

NATIONAL SURETY vs LAMORAK INSURANCE  
James Gardner on May 23, 2018 30(b)(6), Confidential

Job 28171  
Index: Yeses..yield

**Yeses** 5:20

**yesterday** 8:2

**yield** 17:16